INS AND THE EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

HEARING

BEFORE THE

SUBCOMMITTEE ON
IMMIGRATION AND CLAIMS

OF THE

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HOUSE OF REPRESENTATIVES

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TUESDAY, MAY 15, 2001

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON IMMIGRATION AND CLAIMS,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Subcommittee met, pursuant to call, at 2 p.m., in Room 2237, Rayburn House Office Building, Hon. George W. Gekas [Chairman of the Subcommittee] presiding.

Mr. GEKAS. The hour of 2 o'clock having arrived, the Committee will come to order.

By dint of the rules of the House and those that are mimicked by the Subcommittee rules, a hearing quorum consists of two Members; and the fall of the gavel signifies our intent to begin each hearing and each session of this Committee on time. Sadly, I must recess now until the second Member should appear.

During that time, you have a choice. I can repeat some Shakespearean sonnets or sing old barber shop melodies. We will forego both for the time being and recess until a second Member should appear. We stand in recess.

[Recess.]

Mr. GEKAS. The time of recess has expired by reason of the appearance on the working quorum of a Member in the name of Lamar Smith of Texas, former Chairman of this Committee.

The purpose of this hearing, of course, is an oversight of the Immigration and Naturalization Service and its accompanying entities and personnel and other items.

There is no American living who is not aware of the massive problems we are experiencing with immigration—legal immigration, illegal immigration, the status of documented and undocumented workers. The list can go on and on with the variety of vexations that accompany our immigration policies or lack of policies.

While we listen to the testimony today we should keep in mind that indeed the administration and its budget offering contemplates an increased number of dollars to assist the completion and the beginning of some work; and one of the questions that will emanate from this hearing will be, will that be enough? Will that funding be enough? Or, on the contrary, is pouring additional money into projects which seem to have gone unheeded or unsatisfactorily serviced in previous months and years, would that be just throwing good money after bad?

The number of questions and the problems are as wide as the imagination. But we are constrained and we will be very patient

in listening to the points of view of the witnesses and then subject them to as much relevant questioning as we can muster on the various subjects to which we have made some reference.

We will begin by offering the gentleman from Texas the privilege of making an opening statement if he so desires.

Mr. SMITH. Thank you, Mr. Chairman. I really do not have an opening statement, but I am looking forward to the answers to the questions we might have for our witnesses today.

I would like to thank you for having this hearing and for your active interest in all the subjects you mentioned in your comments just a minute ago. As you pointed out particularly, the INS has gotten a dramatic increase in their funds over the years; and we want to make sure we and the taxpayers of America are getting our money's worth. With this new administration I happen to think we are off to a very good start; and I think there are a lot of priorities we are going to be hearing about today that are going to be welcome news for those of us who care about immigration but care about all aspect of immigration, that is, not only processing legal grant immigrants more quickly but also enforcing those laws on our books on those who come into our country illegally.

Thank you, Mr. Chairman, for having the hearing; and I, like you, look forward to hearing the testimony.

Mr. GEKAS. I thank the former Chairman.

We turn to the panel with brief introductions with the distinguished membership of this panel and announce the presence of even more than we expected by reason of a hearing quorum, the gentleman, Mr. Cannon, a Member of the Committee.

The first witness will be Kevin Rooney, the Director of the Executive Office for Immigration Review, now Acting Commissioner of the Immigration and Naturalization Service in the Department of Justice. He comes to this panel after a long time of service to the Nation. He comes from Palmer, Massachusetts, and is a graduate of St. Mary's Seminary and University and Georgia Washington University School of Law.

He is quite well versed as we gained not only from public pronouncements and actions over the years but for purposes of this Chair's acquaintance with a lengthy consultation that we held in advance of this meeting today.

He is joined at the witness table by Peggy Philbin, the Acting Director of the Executive Office for Immigration Review in the Department of Justice. We, too, met but only just briefly before the hearing has begun; and we find a long list of credentials on the part of Ms. Philbin as well which will become a part of the record as we introduce the introductory material into that record.

They are joined by Bishop Thomas Wenski, the Auxiliary Bishop of Miami. He is testifying on behalf of the National Conference of Catholic Bishops' Committee on Migration.

I think I should note that the Bishop's presence here is emblematic of what I think is the experience of most Members of Congress, that within almost every district, and particularly those that deal with immigration, that the local Catholic entities have been involved in every phase of immigration problems just like the ones we said in our preamble, legal immigration and the application for status, and dealing with illegal immigration as well and all the at-

tendant problems. So it is appropriate that the Bishop be here today as a witness.

They are joined by Roy Beck, the Executive Director of Numbers USA, which entity has been very helpful to some, some would say. Some would not say that. But that is the temperature of controversy. But we will be looking forward to his views as this meeting unfolds.

We will begin promptly by saying for the record that the written statement of each of the witnesses will be made a part of record without objection and that each individual is asked to reduce that written statement to, as humanly possible, 5 minutes. We will begin in the order in which they were introduced by starting with Mr. Rooney.

But right before we start we will enter an additional statement into the record. The Subcommittee, as part of its claims jurisdiction, oversees the operations of the Foreign Claims Settlement Commission. In lieu of appearing today, the Commission submitted a statement for the record detailing their current functions. Without objection, the Commission's statement will also be made a part of the record.

[The material referred to follows:]

PREPARED STATEMENT OF JOHN R. LACEY

Mr. Chairman and Members of the Subcommittee:

I am pleased to have the opportunity to present this statement on behalf of the Foreign Claims Settlement Commission as part of your committee's Department of Justice authorization hearings.

The Foreign Claims Settlement Commission came into existence on July 1, 1954, pursuant to Reorganization Plan No. 1 of 1954. It operated as an independent Executive agency until October 1, 1980, when it was transferred by Public Law 96–209 (22 U.S.C. 1622a) to the Department of Justice as a separate agency within the Department.

The Commission's appropriation for Fiscal Year 2001 is $1,105,000. It is important to note, however, that most of the statutes under which the Commission has conducted claims programs have provided for a 5-percent deduction from the lump-sum settlement funds, to the credit of miscellaneous receipts, to defray the administrative expenses of conducting the programs. Over the years of its existence, the Commission's budget appropriations have amounted to some $37 million but the deductions have totaled over $40 million. Consequently, the funding of the Commission's operations has come at little actual cost to the taxpayer.

The Commission's primary mission is to adjudicate claims of United States nationals against foreign governments, as authorized by Congress, following referral by the Secretary of State, or following government-to-government claims settlement agreements. Such claims have resulted from:

- Nationalization or other taking of property by foreign governments
- Damage to or loss of property caused by military operations during World War II
- Maltreatment during confinement by enemy forces as prisoners of war or civilian internees
- Loss of liberty and damage to body or health due to confinement in Nazi concentration camps

In all, the Commission and its two predecessor commissions have administered a total of 44 claims programs involving some 17 foreign countries in which more than 660,000 claims have been filed and awards granted in excess of $3 billion. The Commission's most recently completed programs have involved claims against Germany, Albania, and Iran.

The Commission consists of a Chairman and two part-time Commissioners, who are appointed by the President and confirmed by the Senate, and serve for fixed three-year terms. The Commission currently has a total of 11 authorized permanent employee positions. In addition to those of the Chairman and Commissioners, it has

four attorney positions and four administrative support positions. The Commission currently maintains only the minimum level of staffing and physical resources needed to carry out its current responsibilities, but it must maintain the capability to effectively initiate new claims adjudication programs or begin other claims-related work in the event there are international or domestic developments requiring it to do so.

The Commission expects to continue being called upon to respond to requests for information from its Cuban Claims Program in support of the Department of State's continuing implementation of Title IV of the Helms-Burton Act. Under that provision, the State Department is charged with denying entry into the United States of officers and other senior employees of foreign entities found to be trafficking in properties formerly owned by U.S. nationals.

Under the authority given the Secretary of State in 1999 to refer claims to the Commission for preliminary evaluation, the Commission is also expecting a possible referral of certain categories of outstanding claims of U.S. nationals against Iraq. In addition, the Commission will continue to register and collect the names and addresses of potential claimants and conduct other preliminary planning in order to be ready to begin adjudicating these claims.

As part of its responsibility with respect to prisoner-of-war claims, the Commission must also maintain the capability to provide information from its records on World War II, Korean War and Vietnam War era claims to veterans and their families seeking to qualify for benefits under various state and Federal programs, including medical benefits provided by the Department of Veterans Affairs.

Lastly, the Commission continually assists with and advises on a variety of international claims matters, coordinating with the Departments of State and Treasury, international organizations such as the United Nations Compensation Commission and the International Organization for Migration, and foreign government officials and agencies, including, most recently, officials in the governments of Poland, Germany and Croatia. It also receives numerous requests from Congressional offices and the public for information and advice on completed claims programs and proposals for new claims legislation.

Mr. Chairman, this concludes my statement on the Commission's behalf. I will be happy to answer any questions which you or the other Members of the Subcommittee may have.

Mr. GEKAS. We will begin with the clock beginning to run on 5 minutes with Mr. Rooney.

STATEMENT OF KEVIN ROONEY, IMMIGRATION AND NATURALIZATION SERVICE, DEPARTMENT OF JUSTICE

Mr. ROONEY. Thank you, Mr. Chairman, Mr. Smith, Mr. Cannon. I appreciate the opportunity to appear today and provide an overview of the Immigration and Naturalization Service's operations in the context of the President's budget request for fiscal year 2002.

In recent years, this Subcommittee's strong support has allowed INS to reverse decades of neglect. We have become one of the fastest growing Federal agencies and, even more important, one of the most improved. Our $5.5 billion budget request for fiscal year 2002 will enable the agency to build on the solid foundation we have laid together and further strengthen the Nation's immigration system.

Although the record resources we have received were desperately needed, the real key to INS's improved performance has been the coherent, comprehensive strategies developed for both enforcement and for services. These strategies ensure that our resources are deployed in the most efficient and effective manner possible. Our proposed budget, which is 10 percent higher than the current funding level, continues support for these strategies.

INS's enforcement strategy is aimed at building a seamless web that extends from our borders to the Nation's interior. The entire enforcement web is anchored by border control which has been and will continue to be our focus. Enforcement efforts at the border are

designed to both facilitate the legal flow of people and products into our Nation and prevent illegal immigration and the smuggling of drugs and other contraband.

To move closer to our goals in fiscal year 2002, we are seeking 570 Border Patrol agents. These new agents, plus an additional 570 that the Administration has promised for the next fiscal year, 2003, will complete the 5,000 agent increase authorized by Congress in 1996. We are also asking for $20 million for intrusion detection technology, which has a force multiplying effect.

We plan to deploy the bulk of these resources along the Southwest border, particularly in Arizona and eastern California. We want to replicate the recent successes that we have had elsewhere, including San Diego where illegal entries have been reduced to their lowest level in 25 years.

Enhancing enforcement between our ports of entry is not enough, however. This must be coupled with similar efforts in the ports at the border and in the Nation's interior. INS has been doing this, and our fiscal year 2002 budget request will allow us to continue strengthening port activities by providing $50 million for 417 new immigration inspectors.

The budget also earmarks $26 million for upgrading various automated information systems, including the database that the inspectors use to prevent criminals, suspected terrorists and other inadmissible individuals from entering the country.

INS recognizes that without an effective detention and removal program, however, detecting and apprehending deportable aliens becomes little more than a training exercise, lacking in credibility and producing few results. We have worked diligently to enhance our capacity to detain and remove deportable aliens, especially criminal aliens; and the results have been dramatic. Last year for, example, we removed 70,427 criminal aliens, more than double the 1995 total. Our budget request will allow us to build on this record of success by providing an additional 173 positions and $89 million for detention and removals.

The aggressive approach taken to fulfill our enforcement responsibility has been adapted through the delivery of services. Our focus has been rebuilding a service structure that was woefully inadequate to handle the skyrocketing demand for immigration benefits, a demand fueled by both changes in immigration law and record-level legal immigration.

Preliminary figures indicate that we welcomed more newcomers since 1999 than in any other decade in U.S. history. This helps explain why between 1993 and 2000 INS received more applications for citizenship than in the previous 40 years combined.

The rebuilding, though, is far from complete, but I can assure you that considerable progress has been made. Last year, for example, we completed 24 percent more benefit applications than we did in 1999. As a more meaningful measure for those applicants who have languished in line, we completed 430,000 more applications than we received last year.

The need to complete reconstruction of the service structure couldn't be clearer. Based on receipts to date we project that by the end of this fiscal year we will receive some 9 and a half million ap-

plications and petitions for benefits. That is 50 percent more than we received last year and 80 percent more than in 1999.

Currently, we are implementing the Legal Immigration Family Equity Act, the LIFE Act, which was signed into law in December. We estimate that the agency will receive nearly 4.5 million LIFE Act-related applications by the end of fiscal year 2003. In fact, we are already feeling the impact of this law. It is the chief reason why we received more non-naturalization applications in March than in any other month in more than a decade.

As if this weren't enough, the Administration has proposed establishing a universal 6-month standard for processing all benefit applications and petitions within 5 years. To meet this goal, it has pledged its support to a $500 million initiative to fund new personnel and enhanced technology and to make customer satisfaction a priority.

Mr. GEKAS. Would the gentleman attempt to bring it to a summary close?

Mr. ROONEY. Absolutely.

We have included in our budget $100 million for this initiative.

It has become clear to me, Mr. Chairman, during the 7 weeks that I have served as Acting Commissioner that INS is moving along in the right direction; and I look forward to working with you and the Members of the Subcommittee to maintain this momentum. Thank you, Mr. Chairman.

Mr. GEKAS. Thank you.

[The prepared statement of Mr. Rooney follows:]

PREPARED STATEMENT OF KEVIN ROONEY

INTRODUCTION

Thank you Mr. Chairman, Congresswoman Jackson Lee, and Members of the Subcommittee for the opportunity to appear before you today to provide an overview of Immigration and Naturalization Service (INS) operations, accomplishments and challenges in the context of the President's Fiscal Year (FY) 2002 budget request. This INS budget request builds upon the accomplishments that have been achieved with strong congressional support. The resources Congress has provided have enabled INS to meet new challenges and strengthen the Nation's immigration system. They have resulted in improvements in how we enforce immigration laws and how we deliver services to our customers.

INS has already demonstrated over the past several years that when the agency is provided with resources and employs coherent strategies, it can achieve dramatic results. These accomplishments include

- illegal entries in San Diego reduced to a 25-year low;
- effective management of detention growth—6,000 to over 19,000 beds in 7 years;
- removed 362,000 illegal aliens in the past 2 years—126,000 criminals;
- from 1993 to 2000, received and processed more applications for citizenship than during the previous 40 years combined;
- reduced pending naturalization applications from 2.2 million in February, 1999 to 716,000 in February, 2001;
- nearly doubled the number of permanent employees in less than 8 years; and
- computer access within the workforce grew from 20% to 95% in 7 years.

The President's FY 2002 budget for INS continues to support the immigration goals and strategies that the agency has pursued over the past several years. The thrust of INS' FY 2002 budget is to extend the ongoing initiatives aimed at controlling the Nation's borders and maintaining the physical integrity of those borders. INS intends to build on its successful multi-year strategy to: effectively regulate the border; deter and dismantle organizations that smuggle or traffic aliens and nar-

cotics; identify and remove detained criminal aliens from the United States, including terrorists, and minimize recidivism; enhance services and reduce processing backlogs; and reduce immigration benefit fraud and other document abuse. Overall, the FY 2002 budget request for the Immigration and Naturalization Service totals $5.5 billion, a 10 percent increase over the FY 2001 funding level. This budget includes $380 million in enhancements to a base funding level of $5.1 billion. The budget will add a total of 1,364 new staff positions, which will allow INS to grow to over 36,200 workyears by the end of FY 2002.

Border Management

In February 1994, INS implemented an innovative, multi-year strategy to strengthen enforcement of the nation's immigration laws and to disrupt the traditional illegal immigration corridors along the nation's Southwest border. Under this bold strategy, new personnel, backed with equipment and infrastructure improvements, are deployed in targeted areas each year, starting with the most vulnerable areas.

This strategy treats the entire border as a single, seamless entity. Enforcement activities between the ports-of-entry are integrated fully with those taking place in the ports, which the strategy recognizes as both vital to the nation's economy and potential entry points for criminals and contraband. As a result, INS has been able to enhance its enforcement capabilities while dramatically reducing waiting times for those trying to cross the border legally. The strategy uses a phased approach beginning in the Southwest until control is achieved nationwide.

Considerable success has been achieved in restoring integrity and safety to the Southwest border by implementing the strategy through well-laid-out multi-year operations, such as Operation Gatekeeper in San Diego, Operation Hold the Line in El Paso, Operation Rio Grande in McAllen, and Operation Safeguard in Tucson. The initial phases of these operations typically result in an increase in apprehensions, reflecting the deployment of more agents and enhanced technology. However, as the deterrent effect takes hold, the number of apprehensions declines as the operation gains control over the area.

Recognizing that protecting the border includes an obligation to protect lives, the Border Patrol launched the Border Safety Initiative in 1998. This is a joint initiative between the U.S. and Mexico, and is now an integral component of our border control strategy. In the past year, Border Patrol Agents have rescued more than 2,500 aliens who were injured, in distress, or victims of violence while attempting to make an illegal entry.

Border Patrol Recruiting and Hiring

In FY 2000, INS experienced record increases in the number of Border Patrol applicants and hires as a result of: (a) a more focused, local recruitment process, (b) the training of 300 Border Patrol Agents as recruiters, (c) intensified advertising, and (d) offering a $2,000 recruitment signing bonus. The enhanced recruitment program was supported in part by $1.5 million included in the FY 2000 appropriation for these efforts. The Border Patrol has been able to attract sufficient numbers of applicants to meet hiring goals through FY 2001. The INS is currently recruiting to ensure maintenance of a qualified pool of applicants for FY 2002 and is currently not experiencing Border Patrol hiring problems.

In FY 2000, the INS implemented Acompressed testing" at 10 Sectors. This allowed applicants to take the written test and receive results immediately upon completion of the exam. If the applicant passed the written exam, he or she could schedule the oral board examination in 2 weeks. This process is 5 or more weeks shorter than the traditional testing process and has resulted in a 44 percent increase in applicants actually showing up to take the test.

In FY 2000, the Border Patrol trained 300 agent recruiters who participated in over 1,400 recruiting events ranging from campus and military job fairs, to open houses, to booths at local malls. Border Patrol recruiters were encouraged to establish personal contact and feedback with all interested applicants with positive results. We significantly increased advertising and recruitment incentives.

As a result, in FY 2000, the INS achieved a record number of applicants (an 80 percent increase over FY 1999) due to aggressive recruitment and hiring initiatives to address Border Patrol Agent hiring shortfalls. The increase in recruitment provided the applicant pool with sufficient candidates for an associated increase in hiring. In FY 2000, the INS hired 52 percent more agents than in FY 1999.

During this fiscal year, INS has hired 900 new Border Patrol agents and will hire another 700 by the end of the year. Our training classes are already full through July.

Inspections

The INS' border management and control efforts have made a significant impact on the border. In FY 2000, INS carried out immigration inspections for nearly 438 million travelers at the land borders and nearly 92 million travelers at airports and seaports. In FY 2001, these inspections are projected to reach 450 million at the land border and 98 million at airports and seaports, with continued growth in FY 2002. The INS has set FY 2001 performance targets of 80 percent of land border inspections in 20 minutes or less, and 72 percent of air flights cleared within 30 minutes. The INS will also continue the use of automated systems such as dedicated commuter lanes to facilitate the flow of inspection traffic for low risk travelers.

Border Management—FY 2002 Request

The FY 2002 budget includes an additional 570 Border Patrol Agents and $75 million to support the border control strategy. We would propose that these resources be primarily directed to the Southwest border so as to increase the emphasis provided to the eastern California, Arizona and Texas borders. These new agents, plus 570 in FY 2003, will complete the 5,000-agent increase authorized by the Congress in the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996. With these 1,140 additional agents, the total increase of 5,000 Border Patrol Agents will be achieved, and the authorized strength of the Border Patrol will be about 11,000.

The FY 2002 budget also requests $20 million so that deployment of intrusion detection technology, including high-resolution color and infrared cameras and state-of-the-art command centers, will continue. This technology acts as a"force multiplier" to supplement the new agents and provide continuous monitoring of the border from remote sites. This combination of intrusion detection technology and the increased number of Border Patrol Agents will permit INS to enforce the rule of law and enhance border management over larger portions of the U.S. border. This technology assists agents in determining the source of the"hit," including the number of intruders, and if they are visibly armed, thereby increasing agent safety. The Integrated Surveillance Intelligence System (ISIS) enhancement is an important part of the overall strategy for strengthening control of the borders against illegal entry. ISIS will improve remote detection and tracking capabilities, resulting in increased deterrence of illegal border crossing and increased officer safety. Ultimately, it will provide the INS, in particular, the Border Patrol, with the capability to monitor effectively the integrity of the U.S./Mexico and U.S./Canada national boundaries for purposes of border management.

The INS Intelligence program provides strategic and tactical intelligence support to INS offices enforcing the provisions of the Immigration and Nationality Act, and assists other federal agencies in addressing national security issues. Intelligence program activities contribute support to preventing the entry of illegal aliens, terrorists and narcotics traffickers; identifying and dismantling alien smuggling operations; detecting fraudulent documents and false claims to U.S. citizenship; and detecting other individuals or organizations involved in the manufacture and sale of counterfeit documents, in application and benefit fraud schemes, and in other related criminal activity. The FY 2002 budget includes 78 positions and $7 million to expand the intelligence program on the northern and southern borders of the U.S.

Infrastructure Improvements

The INS continues to face a number of significant challenges in maintaining its infrastructure during a period of rapid growth. New and expanded facilities are required to support a work force of over 32,000. The Border Patrol's infrastructure needs are most serious and have been and continue to be given priority attention. Since the authorization of the INS Construction Account in FY 1995, the Congress has provided much-needed resources to allow INS to replace, expand and renovate facilities and to enhance border infrastructure. The INS budget request for FY 2002 continues support for critical infrastructure requirements. It includes $75 million for construction projects. This total includes $69 million for Border Patrol and detention construction projects, and $6 million for additional work on the San Diego Border Barrier System and for the enhancement of border infrastructure through the critical direct support of Joint Task Force Six (JTF-6) for projects such as fences, roads, and border barriers.

Air and Sea Ports-of-Entry

INS must balance its resources between its goals of detecting those who should not be allowed to enter the United States and managing legal travel across the borders. The FY 2002 budget request includes $50 million for 417 new Immigration Inspectors to staff newly-activated air and sea port terminals, high-growth under-

staffed gateway ports, and coordinated INS/U.S. Customs passenger analysis units. The request also includes 122 inspection assistants and clerks, along with detention and removals resources to support the significant increases in workloads at high-growth air and sea ports-of-entry. The budget provides for an expansion of the Carrier Consultant Program to enhance airline carrier training and for the increased workload attributable to the 2002 Winter Olympics.

With these resources, the Service will strive to process 77 percent of all commercial flights within 30 minutes, and make strides in streamlining and automating manual processes, improving data integrity, and supporting enforcement requirements. To finance these initiatives, the FY 2002 budget would increase the current airport inspections fee by $1 from $6 to $7 for arriving international air passengers. It would also lift the cruise ship fee exemption, instituting a $3 fee for those passengers currently exempt. The increase is to provide resources to cover more of the true costs of operating the program.

In addition, the FY 2002 budget contains $26 million to expand significant resources for information technology initiatives. Resources are provided to update the National Automated Inspections Lookout System (NAILS), a centralized lookout database that is a compilation of information supplied by automated systems within INS and other federal and local law enforcement agencies. It is a critical system that contains data on individuals who are inadmissible, including criminals and suspected terrorists. The request includes resources to study technology for automated airport inspection alternatives. This budget will provide resources to purchase Live Scan Devices that will send electronic fingerprint submissions to the FBI, develop the Vessel Inspection Processing System (VIPS), and purchase portable workstations to access NAILS at the seaports. The FY 2002 budget will also provide the initial investments necessary to develop an automated entry/exit system as required in the INS Data Management Improvement Act of 2000.

INTERIOR ENFORCEMENT

The INS is focusing strategically on combating illegal immigration within the nation's interior. A comprehensive interior enforcement strategy was developed that creates a seamless web of enforcement extending from the border, and beyond, to the worksite. It seeks to facilitate internal coordination among the various INS enforcement activities and forge closer ties with other federal, state and local law enforcement and regulatory agencies. The integrated enforcement effort will promote national security, public safety and economic security. The interior enforcement strategy identified five strategic objectives: to identify and remove criminal and other dangerous aliens, deter and diminish alien smuggling, respond to community concerns and build partnerships, minimize benefit fraud and other document abuse, and block access to undocumented workers and remove those located. While each objective is crucial in its own right, highest priority is given to apprehending and removing those criminal aliens who are causing the greatest harm in our communities.

Anti-Smuggling and Anti-Fraud Activities

The INS has a number of significant accomplishments to report in anti-smuggling and anti-fraud operations. During FY 2000, INS disrupted alien smuggling organizations at source countries, the borders and the interior of the United States. The agency used traditional and non-traditional investigative techniques, cooperation and coordination with the FBI, and broadened use of statutory authorities. The INS presented 7 major cases and 2,520 smuggling principals for prosecution. For example, the"Operation Knight Riders" investigation involved a large-scale alien smuggling organization that specialized in moving large numbers of undocumented aliens from Central and South America and the Middle East into the United States. The successful completion of this case resulted in 9 criminal arrests and the closure of a major smuggling pipeline. In"Operation Telecom," INS investigated and shut down a sophisticated alien smuggling organization that engaged in recruiting and arranging for the smuggling of Chinese nationals from the People's Republic of China. This investigation also involved a law firm that assisted the smugglers by arranging bonds so aliens could be released and returned to the smugglers. The firm also filed fraudulent political asylum claims on behalf of the aliens to ensure that they would remain in the United States.

Quick Response Teams and Community Support

Considerable progress has been made in establishing and staffing the Quick Response Teams (QRTs). In the FY 1999 INS appropriation, Congress provided for the creation of QRTs and directed INS to establish 45 teams with 200 positions. These teams work directly with State and local law enforcement officers to take into cus-

tody and remove illegal aliens. Of the 200 QRT officers that have been selected, 193 have entered on duty at their assigned locations. The remaining officers are expected to enter on duty before the end of FY 2001. INS received $11 million for QRT deployment in the FY 2001 budget. INS will be consulting with Congress on deployment of those resources shortly.

Much has been accomplished with the QRTs. During the first quarter in FY 2001, the teams received 2,532 requests for assistance from State and local law enforcement agencies. This figure reflects the largest number of requests received by the QRTs in any given quarter to date. Of the 2,532 requests, QRTs were able to respond to 92 percent (2,317). The response time for 98 percent of all requests was less than three hours. In addition, QRT officers made 2,246 administrative arrests. Of these arrests, 1,214 individuals were voluntarily returned to their respective countries of citizenship. Special Agents deployed at QRT sites presented 171 individuals for criminal prosecution related to alien smuggling, document fraud, and illegal entry.

In addition to the work accomplished by the QRTs, which are generally deployed to the areas where there is little INS presence and emerging illegal immigrant populations, Special Agents and Immigration Agents in the District Offices also respond to the needs of their communities by participating in many interagency law enforcement task forces. In this context, they contribute their immigration expertise to local, state and federal law enforcement operations in which criminal aliens may be involved, including alien gangs, drug trafficking and terrorism.

Detention and Removal

Since the early 1990's, the average daily population of INS detainees has grown from less than 6,000 to over 19,000. This rate of growth was the result of INS' expanded enforcement capability and changes in detention requirements contained in the IIRIRA of 1996. That law requires the agency to detain without bond many aliens during the pendency of proceedings who are subject to removal on the basis of a criminal conviction. The INS is also required to detain aliens who have been ordered removed from the United States for up to 90 days or until they are removed, regardless of the basis for the order and the prospects that their home countries will accept their return. As a result, annual removals in FY 2000 were over 180,000. Over 64,000 of these were criminal alien removals. In FY 2001, we project that 67,000 criminal aliens will be removed from the country.

In dealing with the growth in the detention population, INS has issued detailed standards aimed at ensuring consistent treatment and care for all detainees. The standards will apply to INS' 9 Service Processing Centers as well as contract facilities and state and local facilities under intergovernmental service agreements. In addition to standards for safe, secure and humane confinement, they provide for consistent and expanded access to legal representation, telephones and family visits. The standards are being implemented with a phased approach, beginning first with the INS Service Processing Centers.

INTERIOR ENFORCEMENT—FY 2002 REQUEST

Detention and Removal

In addition to the expansion of INS' more visible enforcement functions, additional funding will strengthen the detention and removal process. It is critical that INS continue to have resources to efficiently house and repatriate illegal aliens encountered both at the border and through enforcement of immigration laws beyond the immediate border area. To that end, 173 positions and $89 million are requested in FY 2002 for detention and removal initiatives in the areas of expanded national transportation, improved health services for detained aliens, increased detention bed space, and improved coordination with U.S. Attorneys. Included in the $89 million is a projected $40 million in Breached Bond/Detention Fund revenue which is anticipated as a result of the temporary reauthorization of adjustment of status provisions of section 245(i) of the Immigration and Nationality Act (INA), and $7 million for detention beds to support increases in workloads at high-growth air and sea ports of entry.

Consolidated Detention Bed Space

To continue to meet the mandatory detention requirements of IIRIRA, the budget request includes $69 million for 131 positions (68 Detention Enforcement Officers, 33 Deportation Officers, and 30 support positions) and an additional 1,607 average daily state and local detention bed spaces. This initiative includes resources to detain, transport and remove aliens.

National Transportation System

The INS uses the Justice Prisoner and Alien Transportation System (JPATS), created in 1995 by INS and the U.S. Marshals Service, to transport large numbers of detained aliens each year, transferring them to detention facilities or repatriating them. The budget includes an increase of $9 million to fund the costs associated with the INS' share of JPATS. This increase, when combined with current funding, will fund additional air movements to transfer or repatriate detainees.

Public Health

The budget includes funding of $9 million to support the increased cost of providing health care for detainees. The INS is committed to ensuring that its facilities are safe and humane, and that adequate medical care is provided to aliens in its custody.

Coordination with U.S. Attorneys

The budget includes 42 positions (28 attorneys and 14 support personnel) to enable the INS to better fulfill its role of providing agency counsel support when immigration-related matters arise in the Federal courts. This critical role involves such efforts as preparing litigation reports when lawsuits arise, and coordinating agency witnesses and evidence. These efforts are particularly crucial now in view of the high level of litigation involving the removal of detained aliens, a substantial number of whom are convicted felons.

IMMIGRATION SERVICES

The INS has improved customer service in various respects. Due to an intense, two-year Naturalization Backlog Reduction Initiative, the INS has made tremendous progress in increasing its immigration services' productivity and customer service. In FY 1999, INS met its first stage goal of completing 1.2 million naturalization applications. In FY 2000, the INS again met its naturalization goal by completing approximately 1.3 million applications while achieving a processing time goal of six to nine months nationwide. In FY 2000, INS also completed 564,000 adjustment of status applications, more than in any other year in the INS' history, and outperformed its national processing time goal. The Service also streamlined the"Green Card" renewal process, decreasing the processing time significantly from between 12 and 24 months to 90 days. In FY 2000, the INS also reduced the processing time for employment-based petitions from 18 months to 90 days. By transmitting fingerprints electronically to the FBI, the INS decreased the average processing time for background investigation checks from 21 days to one day. The INS enhanced its customer service quality and accessibility by expanding the National Customer Service Center's live, toll-free (1–800 telephone) assistance area across the U.S. mainland, Puerto Rico, the U.S. Virgin Islands, and Guam. All of these accomplishments were achieved within the scope of the overall FY 2000 immigration services workload of 6 million petitions received and approximately 6.5 million completed, resulting in a pending workload of approximately 3.9 million. In FY 2001, the INS continues working diligently to meet its goal of completing 800,000 naturalization and 800,000 adjustment of status applications.

The INS faces significant challenges in delivering immigration services in the years ahead: (1) eliminating backlogs in all immigration benefit applications; (2) managing and responding to new and changing workloads; (3) ensuring process integrity; and (4) positioning itself for the future. Over the last several years, the INS has seen a dramatic rise in the number of applications and petitions received. The Legal Immigration Family Equity (LIFE) Act of 2000 amendments alone will add an estimated additional caseload of 2.3 million applications and petitions in FY 2001 and 1.2 million applications and petitions in FY 2002 to the current 6.9 million applications received annually, a 26 percent increase over a two-year period. Because this additional workload will strain the existing infrastructure, the INS is exploring new ways of doing business to manage the new workload effectively while continuing to tackle the backlogged caseload aggressively. Premium Processing Service and electronic filing are examples of these new ways of doing business. Besides increased productivity, the INS continues working towards achieving process integrity through its anti-fraud and quality control efforts. Most importantly, the INS strives for excellence in customer service through process reengineering, effective use of technology, and greater accessibility to information and services.

Premium Processing Service

As a result of the overwhelming backlogs in recent years, it has taken INS from 60 days to more than one year to process certain business cases. In order to provide better service to business customers and to begin implementing new ways of doing

business that more efficiently manage its workloads, INS proposed a Premium Processing Service for business cases in FY 2001. In the proposal, INS guarantees that businesses that pay for Premium Processing Service will receive an approval, denial, or request for evidence on their cases within 15 days of filing. If INS fails to meet this guarantee, it will refund the fee to the business.

In the FY 2001 budget, INS was given authority to charge a voluntary $1000 fee to provide Premium Processing Service for business cases. The INS expects to implement Premium Processing Service in early summer for some applications. The INS estimates that, for FY 2001, the Premium Processing Service fee could generate approximately $25 million in additional revenue. These funds will be used to support the Premium Processing Service on the business cases for which the fee is paid, to detect and deter fraud in benefit programs, and to support backlog elimination efforts. In addition, other INS customers will benefit from the implementation of Premium Processing Service through experience gained from the new business processes and because revenues received in excess of the program costs would be used to pay for infrastructure needs in adjudications and customer service.

Legal Immigration and Family Equity (LIFE) Act

The LIFE Act, which was enacted on December 21, 2000, will have a major impact on INS' service functions this year and for several years into the future. It focuses on six primary immigration benefits. The LIFE Act reauthorized section 245(i) of the INA, providing INS with the authority to adjust the status of certain persons unlawfully in the United States. Eligible individuals had until April 30, 2001 to file a qualifying petition or application with INS or the Department of Labor to sponsor beneficiaries for legal immigration. The Administration supports an extension of this deadline.

The LIFE Act provides for a"Late Legalization" program that reopens the Legalization Program authorized by the Immigration Reform and Control Act of 1996. This will allow members of three class action lawsuits—Catholic Social Services (CSS), League of United Latin American Citizens (LULAC) and Zambrano—to file to adjust status. In addition, the Act expands the existing Family Unity Program to include eligible spouses and minor children of"Late Legalization" applicants.

The Act creates a new"V" Visa classification for the spouses and children of lawful permanent residents who have been waiting three or more years to immigrate. It also creates a new"K" Visa non-immigrant classification for spouses and children of U.S. citizens.

Finally, the LIFE Act contains amendments to the Nicaraguan Adjustment and Central American Relief Act (NACARA) and the Haitian Refugee Immigration Fairness Act (HRIFA). The NACARA/HRIFA amendments lift restrictions on waiving certain inadmissibility grounds relating to previous removals and unlawful presence, and eliminate bars to eligibility based on reinstatement of a previous order.

Workload will significantly increase as a result of the LIFE Act. In addition to the residency benefits, all LIFE Act benefits authorize employment for eligible applicants. Prior to passage of the LIFE Act, INS projected it would receive approximately 6,922,000 applications in FY 2001 and approximately 6,847,000 in FY 2002. The Act will increase processing workload by 2.3 million applications and petitions in FY 2001 and 1.2 million in FY 2002, increases of 34 percent and 18 percent, respectively.

Process changes and personnel increases for the LIFE Act workload will be funded from LIFE application/petition revenue. To process the additional workload, a reprogramming notification to increase spending authority of the Immigration Examinations Fee Account will be submitted.

In order to minimize the impact of LIFE Act application processing on the District Offices and Service Centers, V, K and Late Legalization cases will be processed at a temporary facility located near the National Records Center. Applications under section 245(i) will continue to be processed at INS' Service Centers and District Offices, and interviews for Late Legalization Applicants will be conducted at the District Offices.

Victims of Trafficking and Violence Protection Act of 2000

On October 28, 2000, the President signed into law the Victims of Trafficking and Violence Protection Act of 2000 (VTVPA). The VTVPA combines two major pieces of legislation: the Trafficking Victims Protection Act and the Violence Against Women Act of 2000. The Trafficking Victims Protection Act is a comprehensive statute that addresses the heinous practice of trafficking in persons through a multifaceted approach that focuses on enhanced prosecution of traffickers, protection of and assistance to victims, and prevention efforts.

The Trafficking Victims Protection Act will affect the operation of every component of INS to some extent. The new act amends portions of the Immigration and Nationality Act to add a new nonimmigrant classification for victims of severe forms of trafficking—T visas—of which 5,000 are available annually. In addition, it prescribes protections for victims while in Federal custody and provides for the authorization of continued presence for alien victims of severe forms of trafficking in order to assist in the investigation or prosecution of trafficking cases. INS is currently drafting regulations to implement the Trafficking Victims Protection Act.

The Violence Against Women Act (VAWA) of 2000 continues and strengthens our commitment to ending domestic violence and sexual assault. While VAWA 2000 contains many important provisions, Title V of the Act addresses the particular problems that confront immigrant victims of domestic violence and sexual assault. It makes improvements to the immigration relief afforded battered immigrants by the Violence Against Women Act of 1994, and creates a new nonimmigrant classification—a U visa—for victims of certain serious crimes suffered by vulnerable aliens. This new classification provides a mechanism for crime victims who may be helpful to the investigation or prosecution of the specified crimes to remain temporarily in the United States. The statute also gives the Attorney General the discretion, in certain circumstances, to allow nonimmigrants holding T and U visas to become legal permanent residents.

Immigration Services—FY 2002 Request

The INS is proud of its accomplishment of processing over one million naturalization applications during FY 2000, and plans to continue the quality and timely processing of applications. The INS agrees with Congress that all immigration benefit applications should be processed in six months or less. The President's FY 2002 budget includes $100 million to implement the first installment of the President's five-year, $500 million initiative to process all applications within six months and provide quality service to all legal immigrants, citizens, businesses and other INS customers. These resources will be used for increased personnel, enhanced information technology and other resources to make customer satisfaction a priority. The INS is currently working with the Administration to develop a detailed backlog elimination plan to begin in FY 2002.

Electronic Filing

The INS recognizes that electronic filing will improve customer service and convenience of applying for immigration benefits. Although INS is not yet in a position to make all immigration benefit applications available for electronic filing, INS is committed to making multiple applications available for electronic filing in 2002. The initiative represents another new way that INS is thinking about doing business in order to improve management of its workload while delivering better customer service.

CONCLUSION

The FY 2002 request will provide INS with resources needed to carry out an effective immigration strategy. As you know, this Administration is committed to restructuring and splitting the INS into two agencies with separate chains of command that report to one policy official within the Department of Justice. I look forward to working with the Subcommittee on this and other important immigration issues. With your continued support, we can add to the improvements that have already been made, address problem areas and continue to ensure the integrity of our benefits processing.

I would be happy to answer any questions that you, Mr. Chairman, and Members of the Subcommittee may have.

Mr. GEKAS. Let the record reflect that the gentleman from California, Mr. Issa, is in attendance.

Ms. Philbin.

STATEMENT OF PEGGY PHILBIN, EXECUTIVE OFFICE FOR IMMIGRATION REVIEW, DEPARTMENT OF JUSTICE

Ms. PHILBIN. Thank you, Mr. Chairman, Mr. Smith, Mr. Cannon and Mr. Issa.

It is my pleasure to be appear before you today to discuss the functions and organization of the Executive Office for Immigration

Review, EOIR, to highlight some of our recent accomplishments and to outline the President's fiscal year 2002 budget proposal.

EOIR was established almost 20 years ago and has three components, each of whose primary function is to adjudicate immigration-related cases. These include the Office of the Chief Immigration Judge, which overseas all the immigration courts in the United States; the Board of Immigration Appeals, which is the highest administrative tribunal dedicated to immigration; and the Office of the Chief Administrative Hearing Officer, which handles employer-sanction cases, immigration-related employment discrimination and immigration-related document fraud cases. I am proud to say I am accompanied by all three of the component heads here today.

The immigration courts are comprised of 211 immigration judges in 52 courts, with 18 of these courts located in either detention centers or prisons. In addition to holding hearings in our courts, our judges travel to over 100 other hearing locations to conduct proceedings. Many of these proceedings are held in State and Federal prisons as part of the Institutional Hearing Program, or IHP. The vast majority of these cases are in the Federal prison system and in the seven States most affected by illegal immigration—California, Texas, New York, Florida, Arizona, New Jersey and Illinois. This effort is called the enhanced IHP, and last year our courts completed over 13,600 IHP cases.

Overall in fiscal year 2000 the total number of matters received by our immigration courts nationwide was 254,515 cases, a 10 percent increase over receipts in fiscal year 1999. In fiscal year 2000, 255,194 cases were completed by the immigration courts. Approximately 10 percent of these cases are appealed to the Board, as well as certain decisions of INS officers in a wide variety of proceedings. The Board has received approximately 30,000 cases per year for the last several years, an extremely large volume for an appellate body.

While the Board began with five Board members in 1940, it has grown to its current size of 21 Board members, including a chairman and two vice chairman and a staff of approximately 100 attorneys and paralegals.

In response to the continuously rising caseloads associated with increased INS apprehensions as well as recent legislative developments, the Board has initiated a variety of management and regulatory improvements designed to increase efficiency while maintaining due process guarantees for all.

One regulatory initiative streamlines the Board's procedures by allowing noncontroversial cases to be adjudicated by a single Board member rather than by a three-member traditional panel. This type of decision may be made in three types of cases: one, where the immigration judge's decision was correct; two, where the issues are controlled squarely by legal precedent; or, three, where the issues are insubstantial. This effort, while in its pilot stage, is proving highly successful.

With regard to our component OCAHO, we anticipate that its caseload will likely increase soon due to the settlement of the class action suit of *Walters* v. *Reno*, the case which has effectively suspended enforcement of the civil document fraud provisions of section 274C of the INA.

Let me discuss several other initiatives briefly.

Last year, EOIR established a position of nationwide pro bono coordinator to work collaboratively with immigrant organizations, the INS, bar associations, law schools and other groups to improve the level and quality of pro bono representation before the immigration courts and the Board. In its first year, the EOIR pro bono program has begun several successful initiatives, including a pilot program at the Board where case appeals involving detained and unrepresented aliens are matched with pro bono counsel who write and file appeal briefs on their behalf.

In addition, we have begun intensive training programs for a small group of pro bono attorneys in immigration court practice, procedure and advocacy skills, each designed to provide additional access to pro bono representation.

On another front, EOIR has also established a new "Attorney Discipline" program to ensure that unscrupulous attorneys are not practicing before our courts or the INS. Forty-four attorneys have been sanctioned in the first 9 months of this program. All have been previously disciplined by their State bars. Some have been convicted of felonies ranging from immigration fraud to witness tampering.

Let me turn for a minute to our budget request. For fiscal year 2002, the President seeks $176.7 million to support EOIR's adjudications programs. This request includes funding for mandatory expenses, such as rent and salary increases, and a program increase of $4.85 million which will funds 59 new positions, including immigration judges and appellate staff attorneys.

The increase requested for EOIR is made in conjunction with enforcement increases by the INS, specifically funds in support of an additional 1,600 detention beds and 570 new Border Patrol agents, which we anticipate will bring 10,000 additional new cases to EOIR.

I would like to thank you for this opportunity to appear before the Subcommittee, and I look forward to working with the Members and will answer any questions you are may have.

Mr. GEKAS. We thank the lady.

[The prepared statement of Ms. Philbin follows:]

PREPARED STATEMENT OF PEGGY PHILBIN

Mr. Chairman, Ranking Member Jackson Lee, and Members of the Subcommittee:

It is my pleasure to appear before you to discuss the functions and organization of the Executive Office for Immigration Review (EOIR), to highlight some of the recent accomplishments and goals of our agency and to outline the President's Fiscal Year 2002 budget proposal for EOIR.

EOIR was established in 1983 when the Department of Justice (Department) created the Office of the Chief Immigration Judge and its Immigration Courts and combined this function with the existing Board of Immigration Appeals (Board). EOIR is an administrative hearing tribunal, hearing both trial and appellate immigration cases throughout the United States. Prior to the creation of EOIR, the initial hearing function had been previously performed by special inquiry officers at INS. The functional move of cases from INS to EOIR was to ensure impartiality in the immigration adjudication context by having cases decided by a different entity than the one that prosecuted them. In 1984, there were approximately 100,000 cases brought before the Immigration Judges. In Fiscal Year 2000, over 250,000 cases in 52 locations nationwide were brought before EOIR's Immigration Judges and over 30,000 cases were appealed to the Board.

In 1987, a third component, the Office of the Chief Administrative Hearing Officer (OCAHO), was added to EOIR. Administrative Law Judges within OCAHO interpret

the laws sanctioning the hiring of illegal aliens, immigration-related employment discrimination and immigration-related document fraud.

EOIR's primary function is to provide a uniform interpretation and application of immigration law, through an adjudication process involving individual cases, and to provide due process and fair treatment to all parties involved.

THE THREE EOIR COMPONENTS AND THEIR MISSIONS

Office of the Chief Immigration Judge and the Immigration Courts:

The Chief Immigration Judge provides overall program direction, articulates policy, and establishes priorities for the Immigration Judges. The Immigration Courts are comprised of 211 Immigration Judges in 52 Immigration Courts throughout the United States, with eighteen of the 52 immigration courts located in either detention centers or prisons. Additionally, Immigration Judges travel to over 100 other hearing locations to conduct proceedings.

Immigration Judges preside over ten types of hearings. The most common hearing is a removal hearing, in which INS charges that an alien is unlawfully in the United States and should be removed. However, while almost all hearings include the issue of removability, the outcome of many of these hearings does not turn on this issue, but rather on the issue of relief from removal. Even if an alien is removable, he or she be able may claim asylum, voluntary departure, suspension or cancellation of removal, adjustment of status, registry or a waiver of removability due to criminal activity. Immigration Judges are experts in the many and varied issues of immigration law, and are often called upon to determine such complex issues as derivative citizenship claims or interpretation of state or federal criminal laws as they relate to immigration. In addition to the substantive issues surrounding removability, the Immigration Judges hold bond hearings for eligible aliens. Bond redeterminations are held when an alien in custody seeks release on his or her own recognizance, or a reduction in the amount of bond. The law states that decisions of Immigration Judges are final, unless appealed or certified to the Board.

One of the most significant activities our judges perform is providing removal hearings for aliens convicted of criminal offenses who are incarcerated in prisons across the United States. Our judges travel to 44 states (and Puerto Rico) and 72 prisons on regular details and currently complete 98 percent of all hearings for incarcerated aliens before their release from prison. Last year alone, Immigration Judges spent 1815 days on these hearings.

The Institutional Hearing Program (IHP) provides the framework for hearings that determine the immigration status of aliens convicted of criminal offenses who are incarcerated in prisons across the United States. In concert with the INS, EOIR has concentrated on the Federal prison system and those in the seven states most affected by illegal immigration: California, Texas, New York, Florida, Arizona, New Jersey, and Illinois. There are also programs in virtually all other states, the District of Columbia, Puerto Rico, the Virgin Islands, and selected municipalities. The seven state programs, known collectively as the Enhanced IHP, account for the vast majority of the state program caseload, as well as that of the total IHP. Consequently, Enhanced IHP is a central component of a variety of initiatives designed to expedite the removal of criminal aliens who are found removable from the United States. This involves close coordination with INS, the Federal Bureau of Prisons, and state and local correctional authorities.

Due to increasing reliance on INS's administrative removal procedures, where an INS official may order certain criminal aliens removed without a hearing before an Immigration Judge, the number of IHP receipts has decreased by 22 percent from Fiscal Year 1996 to Fiscal Year 2000. For Fiscal Year 1996, the Immigration Courts received 15,685 IHP cases and completed 15,888 cases (which is more cases than they received, due to cases pending from the previous fiscal year). For Fiscal Year 2000, the Immigration Courts received 12,525 IHP cases and completed 13,655 cases.

One of the most complex areas of immigration law involves asylum. In 1995, the Department completed work on a comprehensive asylum reform initiative, which provided greater avenues for relief for those with meritorious cases, while closing down the loophole of automatic employment authorization for all asylum filers.

Asylum reform has streamlined the procedures involved for processing asylum cases, integrated INS and EOIR processes, and eliminated duplicative adjudications. Asylum reform requires claims that are not approved by INS to be automatically referred to EOIR's Immigration Judges, who conduct full asylum adjudications during the alien's removal proceedings. These regulatory asylum procedures include provisions limiting the INS approval of employment authorization to those aliens who have been granted asylum, or whose applications are not adjudicated within

180 days of the filing date. Consequently, the success of asylum reform largely depends on the ability of Immigration Judges to render decisions within the established time frames. Otherwise, the benefit of work authorization would accrue to thousands of aliens who may not be entitled. Currently, Immigration Judges are completing 90 percent of the expedited asylum adjudications within the 180-day time frame.

The number of requests for asylum from the Immigration Courts has gradually decreased over the last few years. While in Fiscal Year 1996, the number of asylum receipts was 84,293, for Fiscal Year 2000, the number of asylum receipts declined to 51,241, a 39 percent decrease. In Fiscal Year 2000, 60 percent of asylum filings were received in New York City, San Francisco, Miami, and Los Angeles Immigration Courts.

EOIR has coordinated the implementation of expanded programs with the INS to ensure the optimal placement of resources based upon the volume and geographic concentration of detained, asylum, and criminal alien workload. To enhance the implementation of the asylum reforms, EOIR expanded the number of Immigration Judges in many courts and established several new courts. EOIR's computer system has been modified to facilitate the implementation of asylum reform by enhancing case tracking capabilities and by allowing all local and regional INS asylum offices limited access to the system. INS personnel can now access the Automated Nationwide System for Immigration Review (ANSIR) system and schedule cases for Immigration Judge hearings immediately upon their decision to refer asylum claims to EOIR. INS regional service centers can now access the ANSIR database and ascertain the status of cases to determine an alien's eligibility for employment authorization. This interactive scheduling system is now available to INS nationwide for all case types.

EOIR has also been active in the regulatory area, publishing regulations that include provisions allowing the use of stipulated removals, thereby enabling the expedited removal of criminal aliens in applicable cases. Regulations also authorize the Immigration Judges to conduct telephonic hearings as well as video electronic hearings, which are particularly effective in providing hearings in remote detention settings.

Finally, INS initiatives continue to have a significant impact on EOIR's caseload. In Fiscal Year 2000, the total number of matters received by the Immigration Courts was 254,515, a ten percent increase over receipts in Fiscal Year 1999. The number of cases completed in Fiscal Year 2000 was 255,194.

The Board of Immigration Appeals:

Under the direction of the Chairman, the Board hears appeals of decisions of Immigration Judges and certain decisions of INS officers in a wide variety of proceedings in which the Government of the United States is one party and the other party is either an alien, a citizen, or a transportation carrier. Board decisions are binding on all INS officers and Immigration Judges unless modified or overruled by the Attorney General or a federal court. The Board exercises its independent judgement in hearing appeals for the Attorney General, and provides a nationally uniform application of the immigration laws, both in terms of the interpretation of the law and the exercise of the significant discretion vested in the Attorney General. The majority of cases before the Board involve appeals from orders of Immigration Judges entered in immigration proceedings. The Board has received approximately 30,000 cases per year for the last several years, an extremely large volume for an appellate body. This is a dramatic increase from the number of cases received in the early 1990's. For example, in 1992, the Board received only 12,774 appeals, less than half of the current number of cases now received annually. In Fiscal Year 2000, the Board completed 21,278 cases. While the Board began with five Board Members in 1940, it has grown to its current size of 21 Board Members, including the Chairman and two Vice Chairmen, and a staff of over 100 attorneys and paralegals.

Processing an increasing caseload has been a challenging task in a time of major legislative action in the immigration arena. The Board has provided the principal interpretation of the Immigration Reform and Control Act of 1986 (IRCA); the Immigration Amendments of 1988; the Anti-Drug Abuse Act of 1988; the Immigration Act of 1990 (IMMACT 90); the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA); the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA); the Nicaraguan Adjustment and Central American Relief Act of 1997 (NACARA); and the Haitian Refugee Immigration Fairness Act (HRIFA) of 1998. New challenges will include interpretation of the Victims of Trafficking and Violence Protection Act of 2000 (VTVPA) and the Legal Immigration and Family Equity Act of 2000 (LIFE). These laws have represented the most fundamental restructuring

of the Immigration and Nationality Act (INA) since its enactment in 1952, and have presented a myriad of new issues of statutory construction. The Board's mission requires that national policies, as reflected in immigration laws, be identified, considered, and integrated into its decision process.

In response to the continuously increasing caseload associated with increased INS apprehensions and legislative developments, the Board has initiated a variety of management and regulatory improvements designed to increase efficiency, while maintaining due process guarantees for all parties. A key initiative has been the expansion of the Board to 21 members, allowing the consideration of appeals using multiple panels of three Board members each. Further, Board attorney staff has been restructured into eight discrete teams, each assigned directly to a Board panel. En banc review of cases has been expedited by using a newly created electronic en banc system. These structural changes have greatly improved caseload management, accountability and communication.

In addition to its numerous management initiatives, EOIR has continued to improve programs through the regulatory process. For example, the Board's jurisdictional and procedural regulations have been amended to expedite the motions and appeals practice to allow the Board to assume direct control of appellate filings, replacing a cumbersome and decentralized system of filing at local Immigration Courts. Further, the regulations establish time and number limitations on motions to reopen and motions to reconsider. Regulations also allow consideration of appeals using two en banc panels.

A much broader regulatory initiative, called "streamlining", to streamline the Board's appellate procedures was also recently implemented. Under these published regulations, noncontroversial cases that meet specified criteria may be reviewed and adjudicated by a single Board Member. The type of case amenable to this "streamlining" procedure is limited to the following:(1) where the result reached in the decision under review was correct and that any errors in the decision were harmless or nonmaterial and (2) where the issue on appeal is squarely controlled by existing Board or federal court precedent and does not involve the application of precedent to a novel fact situation; or (3) where the factual and legal questions raised on appeal are so insubstantial that three Member review is not warranted. This initiative is currently being implemented through a pilot project, and the results of this project will be used to implement streamlining on a permanent basis. From September of 2000 through April 2001, just over 30,400 cases have been screened for eligibility. Of those, 15,614 were initially placed into streamlining and 6,029—20 percent of those screened for eligibility—resulted in decisions signed by a single Board Member.

Office of the Chief Administrative Hearing Officer:

The Office of the Chief Administrative Hearing Officer (OCAHO) is comprised of a Chief Administrative Hearing Officer (CAHO) and three Administrative Law Judges (ALJs). The ALJs adjudicate individual cases according to the Administrative Procedures Act. OCAHO cases involve: (1) the unlawful hiring, recruiting, referring for a fee, or continuing employment of unauthorized aliens by employers, and their failure to comply with employment verification requirements (employer sanctions); (2) immigration-related unfair employment practices; and (3) immigration document fraud. Complaints under these sections of the Act are brought by the INS, the Office of Special Counsel for Immigration-Related Unfair Employment Practices, or private individuals. All decisions by this office are considered final unless overturned by a Federal court or the Attorney General.

In the area of document fraud, a settlement was recently approved in the class action lawsuit of Walters v. Reno, the case which has effectively suspended enforcement of the civil document fraud provisions of Section 274C of the INA and resulting cases for the past four years. Settlement of the Walters case could increase OCAHO's caseload substantially as INS resumes enforcement of Section 274C, since the coverage of the statute was broadened considerably by amendments to the law in 1996 and because a higher percentage of respondents in document fraud cases can be expected to request an ALJ hearing with the adoption of new procedures included in the settlement.

In FY 2000, OCAHO received 31 cases and completed 122. In addition, OCAHO judges have also been empowered to assist Board panels in the adjudication of Board cases as temporary Board Members, and have adjudicated 7,834 Board cases in this capacity.

Other initiatives:

Last year, EOIR established a position of nationwide Pro Bono Coordinator to work collaboratively with immigrant organizations, the INS, Bar Associations, law

schools, and other groups to improve the level and quality of pro bono representation before the Immigration Courts and the Board. In its first year, the EOIR Pro Bono program has initiated several successful programs. First, EOIR has forged partnerships with several national non-profit organizations to pilot the Board of Immigration Appeals Pro Bono Project, where case appeals before the Board involving detained and unrepresented aliens are matched with pro bono counsel who write and file appeal briefs. Second, EOIR, in partnership with local bar and pro bono groups, is providing intensive training to small groups of pro bono attorneys in Immigration Court practice, procedure and advocacy skills through role playing exercises with volunteer Immigration Judges in the immigration court. Third, EOIR is looking for ways to develop and expand joint efforts for pro bono representation to unaccompanied minors in INS custody, such as through the Phoenix Pilot Project. Finally, EOIR is assisting in the development and expansion of the use of Group Rights Presentations to INS detainees and other related projects which improve access to legal information and counseling.

While EOIR is interested in providing opportunities for more aliens to have representation before its courts, EOIR also has established a new program to ensure that unscrupulous attorneys are not practicing before its courts or the INS by establishing an "Attorney Discipline" program. This program was established to address the growing problem of fraud or malfeasance by attorney practitioners. In the first nine months of this program, EOIR has disciplined 44 attorneys, including 28 who have received final orders of discipline. Sanctions have ranged from suspension to expulsion from practice before the Immigration Courts and the Board. Virtually all of these attorneys previously have been disciplined by their state bars; some have even been convicted of felonies from immigration fraud to witness tampering.

EOIR and INS together have achieved significant success in the processing of detained aliens. As a result of a joint INS-EOIR "Detained Delays Task Force," we have reduced the average detention time from the date an appeal is filed with EOIR to removal by INS by 72.5 days per alien. This has reduced the number of days in detention, resulting in approximately 23,000 detention days available for use to detain other aliens. It has also reduced by 70 percent the number of detained cases pending at the Board for longer than 180 days.

In keeping with our customer service goals, EOIR has established a menu driven electronic phone system (a 1–800 number) which provides ready access to Immigration Court information such as hearing dates, times and locations, status of asylum cases, Immigration Judge decisions and appeal information. This system, provided in English and Spanish, reduces the time required for the public to obtain information and schedules. The system is currently receiving more than 150,000 calls per month.

Further, in January of this year, EOIR produced for the first time a Statistical Year Book, which is available on our website *(www.usdoj.gov/eoir)*. This year book provides the public with caseload data for each of its components, including type of cases, cases by nationalities, language, representation status, and custody.

BUDGET REQUEST FOR FISCAL YEAR 2002

For Fiscal Year 2002, the President seeks $176.7 million to support EOIR's adjudications programs. This request includes funding for mandatory expenses, such as rent and salary increases, and a program increase of $4.85 million, which will fund 59 new positions, including Immigration Judges and appellate staff attorneys.

The increase requested for EOIR is made in conjunction with enforcement increases sought by the INS, specifically funds in support of an additional 1,607 detention beds and 570 new Border Patrol agents. We anticipate that these INS initiatives will bring 10,000 additional new cases and appeals to EOIR annually.

The Administration and Congress have recognized the importance of coordinating funding decisions that have cross-organizational impact. For EOIR, the importance of this coordination is critical because the volume, types and location of case largely depend upon the enforcement resources and policies of the INS. Similarly, the realization of the INS enforcement goals as articulated by the Administration and Congress, for example an enhanced ability to apprehend, detain and remove increasing numbers of criminal and non-criminal aliens, rely in part on EOIR's ability to adjudicate the resulting caseload in a timely manner.

Thank you for this opportunity to appear before the Subcommittee. I look forward to working with members of the Subcommittee and would be pleased to answer any questions you may have.

Mr. GEKAS. Let the record indicate that the Ranking Minority Member, Sheila Jackson Lee, is now in attendance.

We will proceed with the Bishop's testimony.

STATEMENT OF BISHOP THOMAS WENSKI, NATIONAL CONFERENCE OF CATHOLIC BISHOPS

Bishop WENSKI. Thank you.

Our comments on the operation by INS today are offered with respect to the role that INS plays in implementing our Nation's immigration laws, a mission which is challenging and at times controversial. However, as Catholic Bishops, we base our testimony upon the principle that the human rights and dignity of the migrant, immigrant, refugee and other persons on the move should be respected and upheld.

I would like to concentrate on several areas in the short time I have to speak: U.S. Detention policy, family unity and reunification through our immigration system, reorganization of the INS, treatment of the unaccompanied alien minors by U.S. Government and our Nation's border enforcement policy. I thank you for having agreed that the entirety of our written testimony be placed in the hearing record.

First, Mr. Chairman, the Bishops are very concerned that more than 20,000 persons are detained in INS facilities, Federal prisons and local and county jails at any one time, especially when INS has the discretion under the law to release certain detainees. We find this troubling not only because of the financial costs of detaining these individuals but primarily because of the human cost of this policy.

The U.S. Bishops favor the repeal of the mandatory detention laws enacted in 1996. In addition, we strongly believe that INS should release asylum seekers, children and long-term detainees who are no threat to society. We recommend alternatives to detention should be developed for these populations and that all detainees should be provided thorough briefings on their legal rights in our system.

With your permission, I would like to enter into the record three reports on the benefit of alternatives to detention and legal orientation presentations. These reports are explained in our written testimony.

[NOTE: The reports submitted by Bishop Wenski are not reprinted here but are on file with the House Judiciary Committee.]

U.S. Detention policy for immigrants are costly both in human terms and budget terms. We ask the Subcommittee to reconsider our detention policies and support funding alternatives for detention.

Secondly, Mr. Chairman, we ask that the Subcommittee reaffirm the principles of family reunification as the cornerstone of our immigration policy by authorizing funds to eliminate backlogs and adjudication, examining our family preference system and making section 245(i) a permanent feature of our law. We are encouraged by the President's call for $500 million over the next 5 years to reduce waiting times to 6 months in all relevant categories, but we believe it is insufficient to meet the need. However, we encourage the Subcommittee to scrutinize carefully the administration's budget to ensure that new funds actually are provided to reach this goal and, if necessary, to support additional appropriations.

We also are heartened by the President's call for an extension of the filing deadline for immigrants to make use of 245(i). Congress wisely extended this deadline temporarily in December, but it has recently expired. We echo the President's call for an extension, and we add that access to section 245(i) should be extended on a permanent basis. We think it represents sound public policy and should be extended permanently.

Thirdly, Mr. Chairman, we ask that you move expeditiously to reorganize the functions of INS, preferably to a structure which separates the adjudications of the enforcement bureau but keeps a strong central authority to oversee both functions. A central authority, ideally a person at a higher level within the Justice Department, would help coordinate the adjudication and enforcement functions and fashion a coherent, coordinated national immigration policy.

In addition, we ask that in any reorganization you carefully consider the financing of any new agency authorizing permanent funding for the adjudication service side of the agency.

We have grave concerns about U.S. Policy toward unaccompanied minors who enter our Nation from abroad. In this regard, we ask you to enact legislation introduced by Senator Diane Feinstein of California soon to be introduced into the House entitled, Unaccompanied Alien Minor Protection Act of 2001. Along with providing important services to kids, the legislation creates an Office of Children Services within the Department of Justice staffed by child welfare experts to provide services to unaccompanied minors, including their placement in appropriate settings.

Mr. Chairman, I close my testimony on an issue which the Bishops have followed with growing concern, our Nation's border enforcement policy. Since 1993, funding for Border Patrol agents has nearly tripled, while since 1995 more than 1,600 migrants have died in deserts and mountains of the American West and Southwest. It is our belief that this one-dimensional policy has not deterred foreign-born persons from trying to enter the United States. On the contrary, it has diminished the human dignity not only of the migrants who attempt to cross into the United States but of the Border Patrol agents who are charged with enforcing the integrity of our borders.

In this regard, we ask the Subcommittee to review our border policy and consider other options for stemming undocumented migration, including restructuring our legal immigration system and the promotion of developmental initiatives in Mexico and Latin America.

Mr. Chairman, the U.S. Catholic Bishops share the interest of the Subcommittee in ensuring that our Nation's immigration system is efficient, fair and generous. We offer these recommendations in the spirit of cooperation and with the desire to work with you to assist the INS in its mission.

Thank you for the opportunities to testify.

[The prepared statement of Bishop Wenski follows:]

PREPARED STATEMENT OF BISHOP THOMAS G. WENSKI

I am Bishop Thomas G. Wenski. Auxiliary Bishop of Miami, and member of the U.S. Catholic Bishops' Committee on Migration. I thank you for the opportunity to testify on behalf of the National Conference of Catholic Bishops' Committee on Mi-

gration on the budget priorities of the Immigration and Naturalization Service (INS). Specifically, I would like to address the vital topics of INS detention practices, including mandatory detention, funding for alternatives to detention, legal orientation for detainees, and the treatment of children; backlogs in the processing of immigration benefit; border enforcement; Cuban/Haitian resettlement; and INS reorganization.

Mr. Chairman, concern for the immigrant and the experience of immigration are both deeply imbedded in Church teaching. The task of welcoming immigrants, refugees, and displaced persons into full participation in the Church and society with equal rights and duties has long been an integral part of the Roman Catholic faith tradition.

The experience of the Church in the United States has provided the U.S. bishops with a special sensitivity to newcomers in our midst. Arguably no other institution in American life has had as much experience dealing with the integration of newcomers as the Catholic Church, especially through her parishes and schools. Since 1976, the bishops have been clear in their affirmation of the Church's solicitude for newcomers:

> The Church, the People of God, is required by the Gospel and by its long tradition to promote and defend the human rights and dignity of people on the move, to advocate social remedies to their problems and to foster opportunities for their spiritual growth.[1]

It is with these values in mind that I address to you my concerns and the concerns of the U.S. Catholic Bishops regarding the fiscal year 2002 budget for the Immigration and Naturalization Service (INS) and the Executive Office for Immigration Review.

INS DETENTION PRACTICES

The Church is deeply concerned about the detention practices of the Immigration and Naturalization Service. As the Subcommittee well knows, the number of people being detained by the INS has tripled in the past three years, making INS detainees the fastest growing population in the country. The INS's detention budget is now over $1 billion a year. More than 22,000 persons are currently detained by the INS, and the number is growing.

The financial costs of this detention is staggering. But as great as the financial cost, so too is the human cost of this staggering increase in INS detainees.

The increase in detention is due to a number of factors. First, Congress in 1996 passed a number of laws that require mandatory detention of aliens, including many for whom detention makes no sense. And second, the decentralized nature of INS decision-making makes it impossible for there to be a national policy on detention.

The bishops recommend a number of policy and legislative changes governing the INS's detention practices:

1. First, the Subcommittee take a close look at mandatory detention laws and, wherever possible, make changes to those laws to give the Attorney General more discretion to release INS detainees who are not a danger to society and are not in danger of absconding.
2. Second, the Subcommittee should direct the INS to pursue a program of providing alternatives to detention for those detainees who are not a danger to the community and are not in danger of absconding. Such a program could be funded by a small earmark of current INS detention funds and would save the federal government millions in detention costs.
3. Third, the Subcommittee should direct the INS to fund "legal orientation presentations" in facilities housing INS detainees to enable detainees to receive accurate legal information about the forms of relief to which they might be eligible or ineligible. This would have the double benefit of speeding proceedings; identifying those detainees who may actually have relief, including valid claims of asylum; and helping those who have no form of relief available to them understand the reality of their situation.
4. Fourth, the Subcommittee should enact comprehensive legislation to ensure that unaccompanied alien children in INS custody are treated humanely and not placed in juvenile jails or in adult detention facilities. The manner in which some children have been treated under our current system is nothing

[1] National Conference of Catholic Bishops, "Resolution on the Pastoral Concern of the Church for People on the Move," November 11, 1976, as quoted in *One Family Under God*, NCCB Committee on Migration, September, 1995, p.7

short of criminal. Representative Zoe Lofgren, a member of this Subcommittee, is about to introduce legislation that we strongly support on this issue. The legislation will be identical to S. 121, bipartisan children's legislation that was introduced last January by Senator Dianne Feinstein (D-CA).

Implementation of these recommendations would have the salutary benefit of actually reducing INS detention costs while treating the vulnerable among us in a more compassionate and humane manner.

Alternatives to Detention. Sixty percent of the more than 22,000 INS detainees currently are held in local and county jails. The rest are detained in INS facilities, Bureau of Prisons facilities, and private facilities. In anticipation of the increasing numbers of detainees, the INS has requested over 1600 additional "average daily state and local detention bed spaces" and 127 additional detention-related officer and support positions for fiscal year 2002. We are concerned with this requested increase, and would like INS to consider alternatives to detention which are more cost-effective and more humane.

Many of those detained by INS do not present a danger to themselves or their communities and are not a flight risk. Detaining such individuals wastes valuable federal resources that could be put to better use. Detention is not only costly in terms of dollars; it is costly, as well, in terms of human suffering as people are needlessly separated from loved ones. Often, the person in detention is the breadwinner for United States citizen and/or lawful permanent resident children or spouses. In these instances, the individual in detention, the family members, and the communities all suffer.

The Church acknowledges and recognizes the right and duty of the government to provide for the public safety and welfare of its citizens. This obligation requires that certain dangerous individuals in removal proceedings should be held in detention pending a resolution of their proceedings rather than permitted to remain in the country at large. But along with this duty should be an obligation to assess whether each individual in detention is *actually* a threat to the safety of the country. Human rights considerations, respect for basic dignity, and the practicalities of cost and efficiency mandate that individuals in proceedings who are not threats to the public safety should not be detained. Along this vein, we believe that those who are not threats to society and are not flight risks should be released from detention. Of particular concern are asylum seekers and indefinite detainees, both of which are groups which the INS has discretion to release.

In addition to providing a more humane and compassionate response to individuals currently detained, viable alternatives to detention for deserving individuals could save millions of dollars in detention costs and free up costly detention space for more urgent uses. For these reasons, Mr. Chairman, I urge you, on behalf of the U.S. Bishops, to earmark at least $20 million from existing funds to support a nationwide program to provide alternatives to detention for individuals who are not a danger to the community and not likely to abscond.

We know that workable alternatives to detention exist. For example, the INS recently funded a pilot project which allowed for the supervised release of more than 500 noncitizens in three categories: asylum-seekers, individuals in removal proceedings due to a criminal conviction, and undocumented persons apprehended at work sites. The results were remarkable. Ninety-one percent of supervised noncitizens in the project appeared in court compared to 71 percent of noncitizens released on bond or parole. Sixty-nine percent of Appearance Assistance Program (AAP) supervised participants complied with final orders of removal compared to 38 percent of a group released on bond or parole. The project showed that supervision costs only $12 per day, as compared to the $61 cost per day for INS detention.[2]

There are also other successful models for alternatives to detention including one operated by Catholic Charities in New Orleans that finds jobs, housing and needed counseling for released asylees as well as long-term detainees. Of twenty-five asylum seekers released from this program, only one has been returned to custody since 2000. The INS supports this project and praises the results. I ask, Mr. Chairman, that an article from the *New Orleans Times-Picayune* on the program be included in the record.

Based on the budget provided for the supervised release pilot ($2 million a year for one site), we project an expansion of the pilot to the ten areas with the largest detention populations would cost $20 million but could provide significant savings

[2] *Testing Community Supervision for the INS: An Evaluation of the Appearance Assistance Program*, Final Report of the Immigration and Naturalization Service, August 1, 2000.

in the FY 2002 INS budget.[3] We urge the subcommittee to consider providing funding for an expansion of these projects to reduce costs and allow those who are no threat to society to stay out of detention.

Unaccompanied Alien Children. Mr. Chairman, we are particularly concerned about the increasing numbers of unaccompanied minors being held in INS detention. We believe that unaccompanied minors in removal proceedings are deserving of special treatment and that the INS should place as many as possible with family members, in foster care or in privately run shelter-care facilities. Yet a large percentage (approximately 30 percent) are still regularly detained in county or municipal juvenile correction centers, despite the fact that many of these minors have not committed any crime, are not considered flight risks, and do not present disciplinary problems. Detention in these jails greatly impairs the minor's access to counsel, and the inherently harsher conditions of confinement can result in the minor being too demoralized and/or discouraged to seek help or to participate meaningfully in court proceedings.

Unaccompanied minors enter the United States under a variety of circumstances. Some seek to reunite with family members, others are asylum seekers who have experienced persecution, some are children who have been smuggled into the country and are at risk of being caught again by smugglers and forced into sweatshop labor or worse. Whatever their circumstances, these children deserve special care. The guiding principle in placing these children in appropriate settings should be the best interests of the child. Therefore, we believe that the care and placement of unaccompanied minors apprehended by the INS should be provided by child welfare agencies experienced in serving the special needs of children. Unaccompanied minors should not be held in any type of secure facility unless absolutely necessary for the child's or society's safety. When used to detain unaccompanied minors, secure facilities should protect these children from potential dangers and separate them from criminal offenders. Mr. Chairman, I ask that a study on the plight of immigrant and refugee children published by the U.S. Catholic Conference's Migration and Refugee Services be included in the record.

Mr. Chairman, we are gravely concerned with the recent transfer by INS of responsibility for unaccompanied minors to the detention and removal division. We believe that this change is potentially a conflict of interest, since those charged with enforcement responsibilities will also be charged with providing child welfare services. In our view, this responsibility should be housed elsewhere, perhaps in the Department of Justice, and staffed by child welfare experts.

This Subcommittee will soon have before it legislation that Representative Zoe Lofgren is planning to introduce that would make comprehensive reforms in the manner in which unaccompanied alien children in United States custody are treated. The legislation will be virtually identical to S. 121, the "Unaccompanied Alien Child Protection Act of 2001," which was introduced in the Senate by Senators Dianne Feinstein (D-CA) and Bob Graham (D-FL). We respectfully ask the subcommittee to consider this issue within the context of your oversight responsibilities, as well as consider this legislation.

Legal Orientation Presentations. In addition to the many other problems faced by individuals in INS detention, these detainees often carry the added burden of being without easy or affordable access to legal representation. Many of the facilities where they are held are in remote locations, far from legal help. Persons in INS detention do not have access to government appointed counsel, and, because most are indigent and cannot afford a lawyer, more than 90 percent go unrepresented. "Legal orientation" presentations, which provide detainees with a briefing on their rights under U.S. law, could offer hope to these unrepresented individuals as well as improve efficiencies in the immigration system, help identify detainees worthy of relief, and reduce detention costs.

We cannot underestimate how much is at stake for these individuals. All are in danger of losing their right to live in the United States. They also are in danger of being separated from their families. Some are in danger of being returned to countries where they may face persecution and/or death. Without legal help, most individuals in INS detention are unclear as to what the process before an immigration judge entails, what relief may be available to them or how to pursue it.

Non-governmental organizations (NGOs), like the Catholic Legal Immigration Network, Inc.(CLINIC) try to represent people detained by the INS. Unfortunately, because of restricted resources, most people go unrepresented. NGOs have found

[3] According to the evaluation report of the pilot project, it costs the INS $3,300 to provide supervised release to each asylum seeker compared to $7,300 to detain an asylum seeker. For those removable for criminal offenses, supervision costs $3,871 compared to $4,575 per detained individual.

that the most effective way to screen people in detention to determine who needs a lawyer is through group legal information presentations.

In the summer of 1998, the Department of Justice (DOJ) funded a modest pilot project, through the Executive Office for Immigration Review, that provided legal orientation presentations to detainees in three sites. The project sought to determine whether informing INS detainees of their rights would have any impact on representation rates, the efficiency of the deportation proceedings, or INS detention expenditures.

The DOJ found that the "legal orientation presentations" benefitted detainees in ways that also benefitted the INS and the immigration courts. They enabled detainees to receive accurate legal information before their hearings with the Immigration Judge. They helped detainees expeditiously determine whether they had potential relief available. They also greatly increased the number of individuals represented as the screening agencies could determine which people had strong claims and needed a pro bono lawyer to assist them further. In addition, they helped those without relief to reconcile themselves to removal. Immigration Judges, in turn were able to complete more cases in a summary fashion and benefitted from immigrants who came to their hearings informed about the process and the law. The Department of Justice has found that the above benefits allow the legal orientation program to increase the efficiency of both the INS and the immigration courts.

Such programs could result in substantial savings to the government. The DOJ report recommended the expansion of the project, stating that it improved efficiency, reduced detention costs and increased levels of representation. The report found that detainees who received "rights presentations" spent four fewer days in detention than those who did not. By expanding legal orientation presentations to other INS detention facilities, the DOJ estimated that over $8 million in detention costs would be saved annually nationwide.[4] While the DOJ report noted that "[b]ased on case data from the pilot period, the rights presentation has the potential to save both time and money for the government while also benefitting detainees," it also stated that the most significant barrier to replicating the rights presentation program is funding.[5]

Therefore, Mr. Chairman, I urge the Subcommittee to direct the INS to use existing funds to provide funding to make legal orientation presentations available to aliens in detention so as to improve deserving detainees access to relief, increase the efficiency of the system, and reduce the overall cost of detaining aliens.

FAMILY REUNIFICATION AND IMMIGRATION BENEFITS ADJUDICATION

The Catholic Church has long taken the position that family unity should be the driving force behind our immigration policy. Family reunification should remain the cornerstone of our national immigration system. All families, including immigrant families, should be supported in their efforts to re-unite or remain together, and to be self-sufficient.

The U.S. bishops make note of three developments under this Subcommittee's jurisdiction that make it more difficult for immigrant families to reunite and remain together in the United States.

Family Preference System. The U.S. Bishops believe that the family preference system should appropriately affirm values important to our society and provide the types of immigrants that benefit this nation. In this regard, we are deeply troubled by the long periods of time legal immigrants in the U.S. must wait before being reunited with immediate family members living abroad. Currently, legal permanent residents must wait at least three years and, in some cases, more than twelve years, to be reunited with spouses and children living abroad.[6] The waiting periods for other family members, such as parents and siblings, are even longer.

Backlogs in Immigration Benefits Adjudications. Although, these lengthy waits are, in part, a result of the numerical limitations on family-based immigration, they could be substantially alleviated by increasing the processing times of applications for immigration benefits, especially naturalization. For many long-term residents whose naturalization and adjustment of status applications are backlogged, the approval of their applications would mean a much speedier reunification with their immediate family members. For those awaiting naturalization, they will be able to reunite with their families much more quickly once they become U.S. citizens because, as citizens, they will not be subject to the numerical limitations. For those awaiting

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[4] "Evaluation of the Rights Presentation," Anna Hinken, *U.S. Department of Justice, Executive Office of Immigration Review*, p. 12.

[5] *Id.* at "Executive Summary."

[6] "Visa Bulletin," United States Dept. of State, Bureau of Consular Affairs, Number 30, Volume VIII, March 8, 2001. (Dept. of State Publication 9514)

adjustment of status, they cannot even apply for reunification with their family members until their applications are approved.

The processing times for adjustment applications have averaged 69 months in some parts of the country.[7] At the beginning of fiscal year 1999, the average time for the processing time of a naturalization application was 28 months.[8] Although the average processing time for naturalization applications has decreased recently, many individuals still wait far too long to have their applications adjudicated. Such backlogs encourage undocumented immigration when family members honor their commitment as a spouse or parent by choosing to join their loved ones prior to receiving a visa.

While we are encouraged by President Bush's call for $500 million to be dedicated to reducing the backlog in immigration benefits over the next five years, we are concerned that this amount is grossly insufficient to meet the Administration's stated goal of reducing waiting times for all immigration benefits to six months. We are further concerned that the majority of the $100 million funded for this purpose in FY 2002 is coming from fee accounts and funding that has been carried forward from a prior year rather than from direct appropriations. It is our understanding that the Administration's budget provides only $45 million in "new money" for the critical task of reducing the backlog. Another $20 million is to come from revenues generated by the new premium processing fee, a yet untested source of revenue.

We are deeply concerned that the current FY 2002 funding for reducing the INS backlog in adjudications does not include $100 million in new appropriations. Even this amount is unlikely to be sufficient to address the serious backlogs in adjudications, particularly in light of the increased workload the INS will face in adjudications as a result of the LIFE Act, the increase in H1-B visas, and the extension of TPS to Salvadorans. We are further concerned that, as the premium processing fee is a new program, the projection of the revenue it will generate may be overly optimistic.

We therefore urge you to work with the House Appropriations Subcommittee on Commerce, Justice, State, Judiciary to ensure that the additional new funds are appropriated for FY 2002 to begin the task of reducing the INS adjudications waiting time to six months or less. By providing the necessary funding in the INS budget to process all immigration benefits, particularly naturalization and adjustment of status applications, in a more timely fashion, we will facilitate the family reunification we, as a nation, so highly value. Moreover, we believe these funds should be directly appropriated rather than generated from fee accounts, and that the funds should be deposited into the "Immigration Services and Infrastructure Improvement Account," a no-year account that was created by Title II of P.L. 106–313, the "Immigration Services and Infrastructure Improvement Act of 2000."

Permanent Restoration of Section 245(i) of the INA. Mr. Chairman, as you know, last year, Congress provided for a temporary extension of the deadline for aliens to file immigration petitions and applications and still make use of Section 245(i) of the Immigration and Nationality Act (INA). As the Subcommittee well knows, Section 245(i) allows undocumented family members of U.S. citizens and legal permanent residents to adjust their status while here in the United States if they are otherwise eligible and have a visa immediately available rather than having to leave the country in order to do so. Without the ability to use Section 245(i), those family members would be required to travel abroad in order to obtain legal status in the United States. In many cases they would have to wait three or ten years before returning to the United States because of changes to the INA made by the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA).

This temporary extension of the filing deadline for making use of Section 245(i) was April 30, 2001. Our dioceses throughout the United States were deluged with requests for assistance with 245(i) applications. Unfortunately, there was not sufficient staff to respond to all requests, and many individuals who met the requirements of this extension were not able to benefit from it because of their inability to obtain legal assistance. More importantly, now that the April 30, 2001 deadline has passed, no one will be eligible for benefits under 245(i), and families will be forced to separate for years before re-uniting or to live together with some family members in an undocumented status.

Mr. Chairman, the Subcommittee has several bills before it that would extend the April 30, 2001, deadline. We support those measures and urge the Subcommittee to move expeditiously to enact an extension of the deadline. At the same time, the

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[7] "A Blueprint For New Beginnings—A Responsible Budget for America's Priorities," *U.S. Government Printing Office*, Washington, D.C., 2001, p.85.

[8] "INS Achieves 2-Year Naturalization Program Goals," News Release, *U.S. Dept. of Justice, Immigration and Naturalization Service*, November 15, 2000.

U.S. Catholic Bishops believe that Section 245(i) should be a permanent provision of the Immigration and Nationality Act, as it is crucial to supporting immigrant families and promoting the goal of family reunification. Furthermore, the permanent restoration of 245(i) would help to provide funds to the INS for carrying out its adjudicatory functions, as each 245(i) applicant must pay a $1000 penalty to the INS which is used for adjudications. Thus, the permanent restoration of 245(i) would not only promote the value of family unity within our immigration policy, but also would provide needed funds to INS to help alleviate its backlog in immigration adjudications.

BORDER ENFORCEMENT

The Church recognizes the right and the responsibility of sovereign states to control their borders. We, therefore, understand that adequate funding and training for the border patrol functions of the INS is necessary to carry out the nation's immigration enforcement function. However, we are deeply concerned that necessary steps be taken to ensure that the human dignity of those involved (border patrol agents as well as those attempting to cross the border) is respected and enhanced. We support efforts to make the border patrol more sensitive to the human rights of those undocumented persons it encounters through the use of independent monitoring mechanisms. We also support efforts to promote sensitivity in local communities to the human rights of migrants.

Over the last several fiscal years, funding for Border Patrol agents has increased dramatically, ballooning from $354 million in 1993 to over $1.2 billion dollars in 2002. The Administration's FY 2002 budget submission would increase the number of Border Patrol agents by 570 to a record level of more than 10,000 agents. At the same time, since the advent of Operation Gatekeeper in 1995, more than 1600 migrants have died in the deserts and mountains of California, Arizona, New Mexico, and Texas.[9]

The bulk of the INS budget is dedicated to Enforcement and Border Affairs. For FY 2002, the agency is requesting $171.6 million in new funds and 1206 new positions, including an additional 570 Border Patrol agents to support its border management strategy. Among the initiatives the INS plans to fund is the continued deployment of intrusion detection technology and additional intelligence resources.

The FY 2002 budget provides an additional 570 Border Patrol agents in each of fiscal years 2002 and 2003. One of the consequences of having so many new members of the border patrol is a lack of selectivity and training. Compounding the problem is the high attrition rate among Border Patrol agents. Of particular concern is the degree to which border patrol agents have been trained in civil rights and human rights matters. There continue to be reports of civil rights violations along the border, including reports of American citizens who might not "look American" being harassed by border patrol agents.[10]

Mr. Chairman, the increased border enforcement by the United States since 1994 has increased the risk factors for migrants crossing the border, driving them into more dangerous terrain and into the hands of smugglers. As a result, in recent years the number of deaths of migrants along the border has risen.[11] While we do not condone or encourage undocumented migration, we nevertheless advocate that the basic human rights of migrants, whatever their legal status, be upheld.

Mr. Chairman, on behalf of the National Conference of Catholic Bishops, we believe it is time for Congress to examine and review U.S. enforcement policy on the U.S.-Mexican border more closely. It is clear that increasing enforcement personnel along the border does not necessarily dampen the will of persons to come to this nation in search of work and a better life, though it can make their journey far more dangerous, and even deadly.[12] We believe that new policy options should be considered. We also ask that INS be directed to train and monitor personnel to respect the civil and human rights of migrants they encounter.

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[9] "Death at the Border," Eschbach, et.al., *International Migration Review*, Vol. 33, No. 2 (Summer 1999), p. 430.

[10] See e.g., "'Driving While Brown' Called an Added Risk in Border Areas," *San Diego Union Tribune*, July 24, 2000; "Judge Stopped Twice on Way to Court," *Houston Chronicle*, October 1, 2000; "Amtrak Border Patrol Practices Examined: Issue of racial profiling raised," by Karen Ivanova, *Great Falls Tribune*, May 25, 2000.

[11] Eschbach, Hagan, and Rodriguez, *Causes and Trends in Migrant Deaths along the U.S.-Mexico Border, 1985–1998*, University of Houston, Center for Immigration Research, March 2001.

[12] "Immigrants face border badlands," Phil Magers, United Press International, April 17, 2001.

THE CUBAN/HAITIAN RESETTLEMENT PROGRAM

Throughout our history the United States has been a beacon of hope to those fleeing political oppression in the form of abusive and totalitarian governments. In the 1980s and 1990s we offered safe haven to many individuals fleeing the anti-democratic governments in Cuba and Haiti. To ease their transition into the United States, the Cuban/Haitian Primary/Secondary Resettlement program (CHPSRP), funded by the Immigration and Naturalization Service (INS) and operated by non-profit organizations, provides initial processing, orientation, family reunification, case management, and employment referral services for Cubans and Haitians who have been paroled into the United States by the INS.

The purpose of the CHPSRP program is to provide resettlement services for Cuban and Haitian entrants, including unaccompanied minors, who enter the United States without documentation and are subsequently given permission to remain in the United States temporarily ("parole"). Without the program, thousands of Cuban and Haitian entrants and unaccompanied minors paroled by INS would be released directly into communities without any support or supervision, where they would further strain the already overburdened state and local social service system. Because there exists no line-item appropriation authority for this program, the CHPSRP must rely on user fees paid by immigrants for adjudication services, an unstable and unreliable source of funding which contributes to rollbacks in the program.

The INS has cut funding for family reunification cases under the CHPSRP, threatening services to Cubans and Haitians who enter the United States and who have relatives in the country. For example, the INS has cut the period in which services are offered to individuals from 90 days to 30 days as well as eliminated a one-time direct assistance grant to assist individuals with basic necessities. The reduction in the service period could eliminate the following services past one month after entry: employment referrals and counseling, individual counseling, life-skills training, English instruction referrals and social service and health care referrals. Given that employment authorization processing normally takes much longer than 30 days, the provision of follow-up services beyond that time period is vital to ensure that Cuban and Haitian entrants reach self-sufficiency. The elimination of the direct assistance grant, a small amount which helps defray the costs for basic necessities while an individual waits for up to four months for employment authorization, will have a harsh impact on individuals, families, and communities.

The impact of these cuts is far reaching. Because the majority of Cubans and Haitians served under this program (about 8,000 a year) enter the United States in the South Florida region, Florida will be disproportionately impacted by the cuts. Seventy percent of Cuban/Haitian entrants are family reunification cases, with at least fifty percent living in South Florida. Without follow-up services and direct assistance, Cuban/Haitian entrants will likely turn to the social welfare system for support, further burdening state and federal governments. Without full funding of the Cuban/Haitian program, Cubans and Haitians will have difficulty adjusting to their new home, preventing them from giving their special skills and contributions to their community and state. Based on this need, the U.S. Bishops support line-item appropriations funding for the Cuban/Haitian program in the FY 2002 budget.

INS REORGANIZATION

Finally, Mr. Chairman, the Bishops wish to address the critical issue of INS reorganization. Currently, there exists no clear distinction between the service/adjudication mission of the INS and the enforcement mission. As a result of this lack of separation of functions, in many cases enforcement officials are also charged with adjudicatory responsibilities. For example, while some INS inspectors belong to the enforcement side of INS, they hold broad and unreviewable adjudicatory authority. A separation of functions, governed by a central authority with clout and shared support services, would help bring clarity of mission to the adjudication and enforcement functions, resulting in more efficient adjudications and more accountable enforcement.

A central authority, preferably located in the Department of Justice, is critically important to ensure that legal and policy decisions are consistent between the bureau charged with enforcement and the bureau charged with service/adjudications. Because of the increasing profile of immigration in our country, a high-level person with some clout within the Executive Branch is needed to run the nation's immigration functions. Such a person should have increased access to Executive branch officials, the authority to speak for the Administration on immigration issues, and increased budgetary authority. Upgrading the INS within the federal system would also increase its ability to attract quality managerial talent.

Mr. Chairman, I also urge you to make funding changes a part of INS restructuring. The costs of operating INS are borne by taxpayers but also by customers who are forced to pay fees for certain services. Many "service" functions, such as naturalization application processing, are paid for by fees which are beyond the financial means of many INS customers. The adjudication/service side of INS should not be funded solely on the basis of fees collected from INS' customers. Any reorganization of the INS should ensure that appropriated funds are available to supplement the Examination Fee Account used now to pay for services. We recommend that Congress appropriate funds into the Backlog Reduction account, created through legislation passed in the 106th Congress. The account was created as a revolving fund, to be used at the discretion of the Attorney General, to supplement funding for adjudication services.

Mr. Chairman, we also believe that, within any INS reorganization, the Asylum Division should remain intact and serve as a model for other parts of the agency. Asylum adjudicators require highly specialized knowledge and skills which are distinct from those of other INS adjudicators. Prior to the creation of the Asylum Corps in 1990, asylum determinations were supervised and performed by INS officers who also adjudicated other types of immigration benefits. The creation of the Asylum Corps has dramatically increased efficiencies in adjudications of asylum claims and allowed asylum officers to remain focused on the asylum mission. The asylum division should serve as a model for other important functions of INS, such as the refugee program. For example, the effectiveness and integrity of the refugee program would be enhanced by modeling it on the Asylum Corps, with a dedicated corps within a single line of authority integrating policy making and policy implementation aspects of the program.

Finally, Mr. Chairman, we strongly recommend that the responsibility for caring for unaccompanied minors who come to our country be transferred outside of INS, preferably to a new office within the Department of Justice. These children, often smuggled into ports of entry, are traumatized and often physically or mentally abused when they enter our country. Currently, however, the majority are placed in INS detention facilities or juvenile facilities with criminal offenders for months, and, in some cases, years. INS recently transferred care and custody of these vulnerable children to the Detention and Removal branch of the agency, a clear conflict of interest which gives those charged with detaining children discretion over release decisions. We urge Congress to investigate this recent decision and direct changes in how INS handles unaccompanied alien minors.

CONCLUSION

Mr. Chairman, the United States must continue to be a leader in welcoming immigrants to our land of opportunity and treating them with respect, dignity and justice within our great nation. On behalf of the U.S. Catholic bishops, I would like to conclude with a summary of the recommendations I have discussed for improving the immigration process in the United States, through INS funding of critical programs and services:

1. The INS should actively engage in the search for alternatives to detention for deserving aliens. This can be accomplished first, by revisiting our mandatory detention laws and second, having the Subcommittee make clear to the INS its support for the small amount of funding that would be necessary to operate alternative programs. Furthermore, the Subcommittee should work with the Appropriations Committee to ensure that such funding is available to the INS.
2. The INS should fund and permit the operation of "legal orientation" presentations, which would increase the efficiency of the immigration system, help identify INS detainees worthy of relief, and reduce detention costs.
3. The Subcommittee should move swiftly to enact Representative Lofgren's "Unaccompanied Alien Child Protection Act," legislation she will soon introduce that will be identical to S. 121, bipartisan introduced in the Senate by Senators Dianne Feinstein (D-CA) and Bob Graham (D-FL).
4. The Subcommittee should act to ensure that family reunification remains the cornerstone of our immigration policy. It can do this by reviewing our family preference system to ensure that it is offering a meaningful opportunity for families to reunify, using its oversight and legislative authority to ensure that the INS is adequately addressing the backlogs in immigration benefits adjudications, including working with the Appropriations Committee to ensure adequate funding for those activities; and instituting Section 245(i) of

the Immigration and Nationality Act as a permanent part of our immigration law.

5. The Subcommittee should ensure that funding for border enforcement include training in civil rights and human rights matters for border patrol officers. Additionally, the Subcommittee should pursue more comprehensive policies for addressing undocumented migration.
6. Line item, no-year appropriation for the Cuban/Haitian resettlement program should be included in the INS FY 2002 budget.
7. The INS should be reorganized to separate the adjudication and enforcement divisions with one central authority and give the agency a higher profile within the Department of Justice. In so doing, the Subcommittee must act to ensure that there is adequate funding for the new agency to carry out its service mission and to manage any transition that is necessary.

Each of these recommendations, Mr. Chairman, is offered respectfully, recognizing that all of us involved in the complex issues of migration—whether government officials, private agency personnel, or the faithful—are doing our best to address the challenges of migration in our increasingly globalized world.

Mr. Chairman, it is the view of the U.S. Bishops that we, in the United States, must renew our commitment to welcome newcomers to our shores and to offer them humane and compassionate treatment. By doing so, we serve our own vital interests and act as an example to other nations.

On behalf of the nation's Catholic bishops, I thank you and your colleagues on the Subcommittee for allowing me the opportunity to present our views and for your leadership on this issue of vital national importance.

Mr. GEKAS. We thank the Bishop and turn to Mr. Beck.

STATEMENT OF ROY BECK, EXECUTIVE DIRECTOR, NUMBERS USA

Mr. BECK. The staff and citizen network of NumbersUSA.com appreciates the chance to speak to the Committee this afternoon on this opportunity.

Numbers USA was founded in 1997 to carry out unfinished recommendations of Barbara Jordan's Commission on Immigration Reform, President Clinton's Council on Sustainable Development and this Committee in 1996.

On February 24, 1995, Barbara Jordan testified before this Committee and said, "Credibility in immigration policy can be summed up in one sentence: Those who should get in, get in; those who should be kept out, are kept out; and those who should not be here will be required to leave." .

The latter is my purpose for being here today. Those who should not be here are not being required to leave. This is about internal interior enforcement.

I speak today as a proxy for hundreds of thousands of Americans who live in communities all across America. These communities are being inundated by illegal immigration, and yet these people do not feel that there is any "service" in Immigration and Naturalization Service.

In preparation for this testimony, we took testimony from citizens in more than two dozen communities across the country where they say immigration laws are violated openly, massively and without apparent consequence. We have also received comments from more than two dozen active INS agents and retired INS officials. What we heard was chilling.

Our main appeal, Mr. Chairman, to you today and the Committee is that you routinely tap into this kind of on-the-ground experience—Americans who live in these communities and the agents

who have to enforce this law—and find out what they need to do to serve the needs of the American people.

We have found in our testimony—we provided you a number of examples of what we found, but I would like to just mention a few things. The evidence is strong that, except for deporting those who have committed aggravated felonies, the INS has indeed abandoned many American communities and left them outside the rule of law as far as immigration laws are concerned. Citizens cannot understand how illegal immigrants are allowed to openly gather in large numbers without any attempt by the INS to apprehend them or at least to disrupt their lawbreaking.

From Houston, a landlord described how the apartment complex she and her husband owned began to be filled by illegal aliens. The owners called the INS with the information. We got help only when there were murders, she said.

In Frankfurt, Indiana, last month, the newspaper reports the head of a local immigration services group saying that of 3,500 foreign-born residents of that area, about 70 percent are illegal.

Now the uninitiated in this country, upon seeing so much law breaking openly acknowledged in an easy-to-control rural area, might expect to see Federal vans arriving the next day to start loading up the lawbreakers, but apparently nothing happened.

Illegal aliens are so sure that INS will never make them leave the country that they stage parades and rallies calling attention to their illegal status as they push for Government benefits and U.S. Citizenship.

Perhaps the greatest outrage to U.S. Citizens is the open congregating of illegal workers on their community streets. A Minnesota citizen commented, did you know there is no number in the phone book for reporting lawbreaking to the INS? All the listed numbers are for benefits. None of them are for law enforcement.

The citizens' words about the INS in general to us were often very harsh and perhaps unfairly so. When we put out the appeal for people to comment, we probably did not hear from the people who are happy with the INS. But we do not overstate by saying that the INS has become a truly reviled agency among citizens seeking a sense of order in their communities.

The INS agents' and officials' comments that we received are barely less harsh than that of the citizens, and yet the overwhelming message that we draw from our interviews from INS people and most citizens is the belief that the INS is filled substantially with dedicated public servants who are not only willing to enforce our Nation's immigration laws but are exceedingly disconcerted and disillusioned by their lack of authorization to do so.

And the complaints seem to be in two ways. One of them is not enough resources; the other is not enough will among the people in middle and perhaps higher management.

Here are a few of the comments from INS sources.

"current regional and headquarters politically motivated policies prohibits us from enforcing immigration law in the interior for fear of offending a group or generating negative media attention." .

An agent who is popular in his community for aggressive apprehensions of illegal immigrants reports that when his numbers get

too high he is dispatched to another part of the country to supposedly help with office work there.

Recently, in the Southeast, INS agents checked 20 suspects while looking for a fugitive illegal felon. They discovered that only two of these people were legal residents, but they let all 18 illegal aliens go because their orders were they didn't have the resources to detain them.

And the incidence of absconding on showing up for hearing dates is legion.

Another says, "We need the ability to immediately respond to citizen complaints and take actions on day laborers, without fear of media attention or criticism." .

Another says, "Local law enforcement agencies are disgusted with us and don't even bother calling anymore since they know we won't or can't respond." .

Are these INS agent experiences typical? I don't know, Mr. Chairman, but I hope this Committee will work diligently to make sure they are not typical and that they become increasingly rare.

The INS may be currently having great success in some communities in America. I hope so. But because the Census Bureau last year found what looks like 6 to 11 million illegal aliens, I have no difficulty believing that the communities from which we heard are more typical than aberration.

Although many of our INS sources did not know each other, their descriptions of what is wrong with the system were remarkably similar; and their suggestions for how to turn around the agency were also similar. My written testimony includes a fuller description of these.

I will conclude by noting that there are perhaps three most clear consensus items from all of our interviews.

Number one, nothing you do on the border will work if INS does not establish bold, vigorous interior enforcement in which every class of undocumented aliens has a credible fear of being detected, detained and deported.

Number two, Congress has to stop undermining everything the INS does by repeatedly passing amnesties and incremental amnesties that reward the lawbreakers and create loopholes through the law. One agent said when he picks people up now they have large numbers of receipts from the last few times that they have been picked up and they say they are saving these receipts for the next amnesty. That is the word that has gone around the world.

Number three, Congress should provide the funding so that the INS can pledge 100 percent service to those communities that call on the INS for help in disrupting the illegal immigration industry.

Thank you.

Mr. GEKAS. I thank the gentleman.

[The prepared statement of Mr. Beck follows:]

PREPARED STATEMENT OF ROY BECK

INTRODUCTION

The staff and citizen network of NumbersUSA.com thank the chairman and the committee for this opportunity to address issues of general oversight of the INS.

NumbersUSA.com was founded as a non-profit, nonpartisan organization in 1997 to advocate for key recommendations of the national, bi-partisan Commission on Immigration Reform. Those recommendations were set aside by Congress in 1996 to

be addressed at a later date. As they have yet to be addressed, we are hopeful that this committee this year will renew the important work of the Commission and its chairman, the late Barbara Jordan.

SERVICE FOR COMMUNITIES OUTSIDE THE RULE OF LAW

We would like to use this occasion to stress the importance of re-establishing the "service" in the Immigration and Naturalization Service. American citizens of all races and walks of life, native-born and foreign-born, in communities in every region of this country are failing to receive even the most rudimentary of service when they call on the INS to deal with the rising tide of illegal immigrants.

In preparation for this testimony, we communicated with citizens in more than two dozen communities where immigration laws are violated openly and without apparent consequence.

The general mood and feeling of helplessness we found is perhaps best described in a May 7, 2001, Newsday article by Bob Weimer, a columnist for the Long Island Newspaper. He was specifically writing about the Long Island community of Farmingville where citizens have organized and met repeatedly with the INS and every other level of government—to no avail. Weimer describes the current scene in Farmingville, but he could easily be describing a hundred other communities:

> "The [INS] service's well-documented inability to do anything about the rising influx of undocumented aliens on Long Island demonstrates a complete bureaucratic breakdown. It has failed to perform its mission. . . .
>
> "The word goes south; the aliens come north, and anarchy spreads and becomes routine. Every day in a thousand ways laws are broken. Congress made it a crime to aid, abet, conceal or induce an alien to enter and/or reside in the United States illegally. . . .
>
> "Farmingville teems with undocumented aliens, but Suffolk police, state officials and the hopeless INS manage consistently to look elsewhere while immigration law, tax law, labor law and local housing and sanitary codes are flouted. Landlords pack the aliens into hazardous and substandard housing. Contractors work them off the books, thereby avoiding all the nasty little charges and levies associated with legal labor transactions.
>
> "Federal and state laws are broken in a thousand different ways every day at hiring sites on Long Island. . . . [After all the efforts of citizens to persuade the INS to enforce the law] nothing has changed. The influx continues. The burden on the town's worn-out housing stock mounts. Local officials, state officials and federal officials continue to avoid the issue. . . .
>
> "The people of Farmingville feel they have been abandoned. They feel the cold wind of anarchy."

INS ABANDONMENT OF AMERICAN COMMUNITIES

The evidence is strong that, except for deporting those who have committed aggravated felonies, the INS indeed has abandoned most American communities and left them outside the rule of law as far as immigration laws are concerned. Citizens cannot understand how illegal immigrants are allowed to openly gather in large numbers without any attempt by the INS to apprehend them, or at least disrupt their lawbreaking. To most citizens, the INS need never do any special investigating or tracking to apprehend scores of illegal aliens every day in most cities. They merely have to go where major numbers of illegal immigrants are well known to gather.

From Houston, a landlord described to me how the apartment complex she and her husband owned—as well as other neighboring complexes—began to be filled by illegal aliens. The owners called the INS with the information. "We got help only when there were murders," she said. Eventually, most of the residents were illegal aliens, living openly in a sanctuary where the federal law apparently refused to reach.

In Frankfort, Indiana, the newspaper last month reported that the head of a local immigrant services group said that, of 3,500 foreign-born residents of the area, about 70 percent are illegal. The uninitiated, upon seeing so much lawbreaking openly acknowledged in an easy-to-control rural area, might expect to see federal vans arriving the next day to start loading up the lawbreakers. But nothing happened. Illegal aliens are so sure that INS will never make them leave the country that they stage parades and rallies calling attention to their illegal status as they push for government benefits and U.S. citizenship.

Perhaps the greatest outrage to American citizens is the open congregating of illegal workers on their communities' streets. Although there are some legal foreign workers mixed in, the undocumented status of many or most is widely known by all in the community. Said one citizen: "In every job I have ever had, I have always

been asked to prove my citizenship/legal residency. Can you tell me why the hundreds of day laborers that converge each day at the West Los Angeles site three blocks from my apartment do not have to do the same? The INS deliberately ignores this blatant, daily lawbreaking."

Refusal of the INS to cooperate with local law enforcement agencies is another source of bitterness. I spent six months in 1996 on a book tour for my immigration book published by W.W. Norton & Company. On nearly every call-in radio show, a local policeman, sheriff's deputy or highway patrol would call and tell me a story about apprehending a van-load or a worksite-full of illegal aliens, calling INS and then being told to release them if they hadn't committed a major felony. The problem seemed especially pronounced in states like Pennsylvania not known for high illegal alien traffic.

Increasingly, local law enforcement won't even bother paying attention to the illegality of residents or call the INS because of years of neglect by that agency. This breeds even more contempt among the citizenry for the idea that they live in a society of laws. A TV photographer in Georgia told me that he has gone on enough INS operations that he believes he can accurately spot cars filled with illegal aliens rather than legal foreign workers. He said, "I once followed a conversion van that was an obvious load of illegal aliens. I followed the van for 65 miles and called at least five law enforcement agencies, but not one would respond. I passed three patrol cars along the Interstate and called their dispatcher who would not dispatch them. I have tried to report the same at other times and had the same reaction."

REBUFFED CITIZEN ASSISTANCE

When citizens first encounter the widespread breaking of immigration laws in their community, they tend to assume that the federal government has an agency that will want to know. But the INS seems to make no effort to enlist the help of the citizenry in its duties. A Minnesota citizen commented to me: "Did you know there is no number in the phone book for reporting lawbreaking to the INS? All the listed numbers are for 'benefits.' None of them are for law enforcement." A North Carolina citizen said every time he calls the INS main phone number, he gets a recording. He has yet to find a way to talk to even an operator.

Not surprisingly, many citizens don't even try to get help; they just assume that nothing will happen. "Illegal aliens have taken over our neighborhood," said a resident near downtown Washington DC. "We know these people are illegal. It is obvious. They have turned our area into a drug war zone and taken over. We've lost everything, and nobody does anything." But she admitted that she had never even thought of calling the INS for help.

Citizens and local law enforcement agencies all over the country would help the INS to identify the immigration lawbreakers if they were only given a chance and a little encouragement. Instead, citizens are either rebuffed or told by sympathetic INS officers that the "orders from above" won't allow them to enforce the law. From Las Vegas, Raleigh, Prescott, Los Angeles, Minneapolis and many points in between, we were told by citizens that INS agents had told them variously: "Not permitted to bother any alien at their domicile, any recreation play ground or place of worship." "Not permitted to make vehicle stops when reasonably sure that the occupants might be illegal aliens, based on many years of experience and training." "No illegal alien discovered at highly publicized companies has been terminated, deported nor the firm fined because the INS is working on other arrangements."

An Arizona woman living 35 miles from the Mexican border told me she witnesses,

> ". . .[daily] hordes of illegal aliens heading north, both in vehicles and on foot, sometimes in groups of more than a hundred. The border Patrol agents in the field, at least for the most part, are doing the best they can. The problem lies with our governmental hierarchy that won't let them do their job because of policies fueled by payoffs from businesses that want the cheap labor. The border Patrol "grunts" out here are many times told to "not see" groups of illegals, which as a result, continue unhindered into the land of milk and honey to take jobs from American citizens.
>
> "The message we are sending into Mexico is insanely contradictory; on the one hand we put an armed force on the border to stop anyone from illegally entering the country and on the other hand, we have hundreds of businesses actively recruiting these same people. I spoke only last week to a friend who does business in Mexico who told me he sees representatives from American companies openly recruiting."

One exasperated citizen remarked after being repeatedly told that his local INS office would not be levying fines or deporting apprehended illegal aliens, "It appears that the local INS has metamorphosed from an agency enforcing U.S. borders or employment related immigration laws into an illegal-immigrant service agency. Clearly, the local INS is deeply involved in wide-scale harboring of illegal aliens."

THE VIEW FROM INSIDE THE INS

The citizens' words about the INS in general were often very harsh, perhaps unfairly so. But we do not overstate by saying that the INS has become a truly reviled agency among citizens seeking a sense of order in their communities.

To better understand why the INS leaves these citizens feeling like they live outside the reach of the rule of law, we solicited the views of people inside the INS. Our open request resulted in our receiving comments from more than two dozen INS officials and people who have retired both from on-the-ground jobs and from high INS echelons. As with the citizens we have quoted, we will do our best to help you talk directly with any of these human resources. The experience of talking with so many INS officials and citizens in impacted communities has been enlightening and sobering and one we recommend to the committee. We encourage the committee regularly to give a ready ear to both constituencies.

The description of the work of the INS by the INS agents and officials is barely less harsh than that of the citizens who live daily with the results of the INS nonenforcement policies. The overwhelming message that we draw from our interviews with INS people (and with most citizens who have had direct contact with INS agents) is that the INS is filled substantially with dedicated public servants who not only are willing to enforce our nation's immigration laws but are exceedingly disconcerted and disillusioned by their lack of authorization to do so.

Here are some of the comments from our INS sources:

> "Current regional and headquarters politically motivated policies prohibit us from enforcing immigration law in the interior for fear of offending a group or generating negative media attention. This includes joint operations with local law enforcement, the ability to work leads and tips without completing and forwarding a detailed 'operation plan' through a maze-like chain of management to pick apart and review."

An agent who is popular in his community for aggressive apprehensions of illegal immigrants reports that when his numbers get too high, he is sent away for a few weeks to another city outside his region to supposedly help with office work there.

Recently in the Southeast, INS agents checked 20 suspects while looking for a fugitive illegal alien felon. They discovered that only two of them were legal residents. But they let all 18 illegal aliens go because their orders were that they didn't have the resources to detain them.

> "We need the ability to immediately be able to respond to citizen complaints and take action on day laborers, without fear of media attention or criticism, and accomplish these things at our own district level, without headquarters interference, backpedaling or second-guessing."

Another source comments, "Twenty or thirty years ago, responding to local calls was a priority."

"Local law enforcement agencies are disgusted with us and don't even bother calling any more since they know we won't or can't respond," says another.

An experienced INS officer says: "We need an employer sanctions program back—without a maze of 'operational plans' before entering a business, notifying businesses before we arrive, more warrants served on scofflaw businesses and serious response to citizen complaints."

Finally, a source tells us, "The enforcement people in INS would really like to start doing our jobs like we did before we were castrated by the policies of the last decade."

Although many of our INS sources did not know each other, their descriptions of what is wrong with the system were remarkably similar. And their suggestions for how to turn around the agency were also similar. I offer you my distillation of the principles the INS officials stated to give you some benchmarks to test on your own. We encourage this committee to probe the wisdom in the ranks of the retired and agents on the beat and see if you find the same thing.

PRINCIPLES FOR TURNING THE TIDE ON ILLEGAL IMMIGRATION

I believe that if you seriously probe to find the views of the rank and file in the INS and of retired INS officers, you will discover them suggesting a set of principles

very much like the following ones that emerged from our interviews. Some of these require congressional participation and are flagged by a notation at the end of the item.

1. *Nothing will turn the tide on illegal immigration without the reinstatement of interior enforcement.* Over the last decade, interior enforcement has been systematically dismantled until virtually all that is left is the deportation of people who commit felonies other than breaking immigration laws. In neighborhoods all over America, citizens are seething because they can so easily see this dismantling. "Interior enforcement" means detecting, detaining and deporting illegal aliens from America's communities in all regions, not just along the borders. "Any alien that makes it in now is almost guaranteed a life without interruption by INS or the Border Patrol."
2. *Putting more people on the border won't do much good unless people in other countries think they could be sent back if they succeed in getting past the Border Patrol. "Throwing more agents at the border won't stop the flow without interior enforcement." Even people whose primary career focus has been the border said the best immediate help for controlling the border would be beefing up interior enforcement. It is the lack of interior enforcement that entices so many to risk their lives to illegally enter the country across deserts, in unsafe trucks and train cars, and welded inside ship cargo units.*
3. *Interior enforcement relies on creating credible fear among all illegal aliens that they could get caught and, if caught, could be deported.* Swift, firm enforcement on just a few can cause many to decide to return home if the enforcement appears possible on every kind of illegal alien. Today, only illegal aliens who break other laws have any significant fear. One officer said: "You have to reduce the comfort level of being an illegal immigrant. Right now, you can bring your family here and live like Americans. We have to make it so they are always looking over their shoulder." The INS needs more money to ensure swift processing and deportation for a credible number of illegal aliens out of each community. When the illegal aliens in those communities see people disappear and not come back, they will begin to think seriously about whether they want to live with that kind of uncertainty. This requires resources to ensure that a certain random percentage of illegal aliens who are apprehended will be personally escorted through every stage of the process until they are out of the country.

   CONGRESSIONAL ACTION NEEDED: *Ensure sufficient funding*.
4. *For the most part, new laws are not needed to solve the problem.* "There has been too much reinventing of the wheel instead of concentrating on putting the resources behind laws already in place." Let the agents use the tools they had in the 1980s, and especially in the 1950s and 1960s, and they can make an incredible dent in the millions of illegal alien population. Most of the tools still exist under law but have been taken away by administrative decision.
5. *Invest in an identification system that will allow every agent to get prints on all apprehended aliens and to check the prints before considering letting them loose with a ticket to appear in court later.* Since there isn't enough jail space to detain every illegal alien until a hearing date, it is imperative that agents be able to jail the ones who are repeat offenders and who have a record of having failed to show up at a previous hearing. Reliance on the FBI print system currently forces agents to wait a couple of weeks for prints to be processed. Agents need something that will report back in an hour or two. The INS has such a system in limited use primarily on the border but it already has exceeded capacity. The INS needs to determine the fastest, most efficient way to resolve this problem and move forward with the extra funding provided by Congress.

   CONGRESSIONAL ACTION NEEDED: *Request proposals and sufficiently fund a system once satisfied*.
6. *Encourage the apprehension and finger-printing of every possible illegal alien, even if there aren't enough resources to deport most of them.* This not only will be disruptive to their communities—especially if people are randomly pulled from the pool to go through the swift deportation system—but it will kick in the 10-year exclusion rule on them, preventing them from benefiting from any legal access to the United States. Widely publicizing this can start to act as a real deterrent.

CONGRESSIONAL ACTION NEEDED: *Congress must resist constantly violating its own laws by giving illegal aliens loopholes around the 10-year exclusion rule*.

7. *Make sure that aliens who enter illegally after being deported are treated as felons as the law allows, earning them guaranteed jail time.* Most illegal aliens break immigration laws to make money. They can't make money in jail. A better fingerprint system will begin finding these "repeaters" in large quantities. It won't take long for the word to get out that "repeating" bears risk of serious inconvenience to the business plan.
8. *The INS must try for the first time to enforce the 1986 employer sanctions law*. Everybody agrees that pressures from those who economically benefit from trafficking in illegal workers has kept the INS from ever seriously attempting to carry out the law. Disrupt the economic gain from illegal immigration and there won't be much reason to break the law. A relentless presence at street-hiring sites is bound to disburse the illegal aliens and leave the jobs for those at the sites who have a legal right to be here.
9. *Not much will happen unless the top echelon and middle management of INS believe in enforcing immigration laws.* "The reason for the problems is that the INS force has been handcuffed by its leaders." The overwhelming opinion among the rank and file is that the leadership of the INS has been filled with people who favor illegal immigration or who are politically afraid of those groups in American society who gain money and power off illegal immigration. The mission of the INS has been corrupted and cannot be restored to provide service to the American people again unless there is a wholesale change in the top echelons of the agency. As in other parts of the Justice Department, people should not be allowed to hold jobs if they believe they can pick and choose which laws to enforce.
10. *Congress must stop making the INS job impossible by enticing millions more illegal aliens through amnesties and incremental amnesties.* "The amnesty programs have devastated our enforcement efforts." The various kinds of amnesties approved in 1997, 1998 and 2000—in addition to the memory of the giant one in 1986—have sent a message to the rest of the world that the Border Patrol and INS agents are merely for show, that the United States actually wants people to come here illegally. "I have talked to many illegal migrants coming back after deportation or voluntary departure. They will tell you that they are saving all their papers that show they have been here and are waiting for the next amnesty program."

    CONGRESSIONAL ACTION NEEDED: *Members of Congress need to publicly take the no-amnesty pledge to send a signal to the rest of the world.*
11. *Congress should provide the funding so that the INS can pledge 100% service to those communities that are calling for help in removing illegal immigrants.* Quick Response Teams (QRTs) have been tried but not properly funded. Their presence will inspire more local authorities to identify illegal aliens. The first INS interview can often be conducted over the phone. If the INS agent determines probability, the alien will stay in local custody for no more than a few days until QRT arrives. "We have a lot of older experienced retired agents who can return to work on a one-year contract to work the cities that have large numbers of known illegal migrants. This approach will give a wakeup call that illegal migration will have consequences." Never again should a local law enforcement agency be told to release a suspected illegal immigrant into the public.

    CONGRESSIONAL ACTION NEEDED: *Sufficient funding for a credible QRT effort, with a pledge to expand funding as long as Americans in local communities still are reporting INS abandonment.*

CONCLUSION

The chairman of the Commission on Immigration Reform, the late Barbara Jordan, testified before this committee on Feb. 24, 1995. She said:

> "Credibility in immigration policy can be summed up in one sentence: Those who should get in, get in; those who should be kept out, are kept out; and those who should not be here will be required to leave."

This committee's oversight task is an incredibly important and challenging one because the INS currently is making virtually no effort to ensure that "those who should not be here are required to leave."

And because of that lack of interior enforcement, our amplified efforts on the border to ensure that "those who should be kept out, are kept out" are failing. Around the world, the word is out: if you can succeed in evading the U.S. Border Patrol on your way in, and if you do not commit an aggravated felony once you travel a few miles into this country, you have virtually no chance of ever being forced to leave. With that kind of incentive, would-be illegal aliens around the world will do almost anything—including risking dying in the desert—to outmaneuver our Border Patrol.

The general spirit of lawlessness in which so many communities find themselves tends to create a cycle of behavior that only moves the communities further toward anarchy. A leader of one group of citizens lamented that quiet homeowners after repeated frustration with the INS turned to the streets in public demonstrations outside their general experience: "Citizens are forced to the streets to protest their own government because of its constructive abandonment of its duties to its citizens. Citizens are arrested while illegal aliens go about their business freely and act contrary to the law, with impunity."

On the border, citizens have drawn national news coverage for taking up arms and taking the law into their own hands as they defend their property from an invasion of sometimes a hundred illegal immigrants a day. These developments presage darker impulses that could be stirred. The abandonment of the enforcement of the law by the INS fans the embers of vigilantism that seem never to be fully extinguished in the spirits of human beings seeking a society of order over disorder.

If this committee does not find a way to help the INS reinstitute credible interior enforcement, the amount of money provided in the INS budget is of no particular consequence—except for the amount of the taxpayers' dollars that are being wasted.

Mr. GEKAS. The Chair will yield itself 5 minutes for a round of questioning of the witnesses and will accord the same privilege to all the Members of the Committee, of course.

Mr. Beck, the bulk of your testimony is visited upon either lax or nonexistent law enforcement on many of the areas in which you have commented. Do you find some benefit from the proposals, including some from Members of this Committee and now from—possibly from the administration, for a bifurcation of the INS so that law enforcement will, in effect, carry its own weight and look to its own business separate and apart from the naturalization and immigration policies on the other side?

Mr. BECK. That is a little bit beyond our full expertise, but I will say this, that nearly universally among the citizens and among the INS people that we talked to that was received in great favor, the idea of having a true enforcement agency and a true benefits agency.

Mr. GEKAS. Ms. Philbin, I noted in your testimony that you have placed some importance, of course, on the unaccompanied minors' situation, and so did the Bishop touch on that. I have a joint question. Either of you could feel free to answer it. Are we satisfied as we sit here that all is being done that is possible to be done to provide guardians ad litem or other types of legal and personal representation for minors in these situations?

Ms. Philbin first.

Ms. PHILBIN. Mr. Chairman, the Department is looking at that issue so I do not have a position on whether we are doing enough in the guardian ad litem area, but I can say that what EOIR has done as an agency has taken great strides in being sensitive to the issue of juveniles. We have—our judges have been trained, and they provide a different hearing setting for juveniles, particularly in Phoenix. We have a program in Phoenix with one of our immigration judges that creates a setting for our juveniles. We worked with the advocacy groups and the INS to try to make the process as fair and as nonadversarial as possible, given the circumstances

of immigration court proceedings. So we are sensitive to the issue, and we look to other ways to improve it.

Mr. GEKAS. Bishop, do you have any comment?

Bishop WENSKI. Right now, about 30 percent of the children, the unaccompanied minors, are being held in juvenile correction centers; and this is of great concern because these children are not delinquents in the sense for the various——.

Mr. GEKAS. But assuming they are not being inhumanely treated, are they given legal representation? That is my question.

Bishop WENSKI. When they are in the juvenile correction centers, sometimes that makes it harder for them to get the access to counsel.

Mr. GEKAS. Why is that?

Bishop WENSKI. Because there could be more easily access to counsel if they were in the foster care situation where the foster care could take them to the attorney rather than having an immigration attorney try to chase them down through the juvenile detention centers.

Mr. GEKAS. Mr. Rooney, does that jibe with your feel about the juveniles and guardians ad litem?

Mr. ROONEY. Mr. Chairman, to say that we were doing all we could for juveniles, obviously, would not be fair.

We have, as I think the Bishop mentioned in his testimony, about 600 juveniles in our detention facilities. We are very sensitive to making our facilities available to those who wish to represent the juveniles. We are doing as much as we can to implement our new standards for our detention centers in making it possible for pro bono and other representatives to come in and talk to and work with the juveniles. We would be concerned about the guardian ad litem situation that not only would the rights of the children be represented but also the rights of their parents, who may or may not be in this country.

But yes, we—clearly, if the juvenile was not in a facility, we would have more ready access to counsel, but we try to make it available to the juveniles in our facility.

Mr. GEKAS. I take it, Mr. Beck, that you do not favor extension of 245(i).

Mr. BECK. It is a device that is meant to deal with a certain humanitarian concern about families that was much better dealt with by the Jordan Commission and what this Committee recommended in 1996. 245 creates loopholes around rules that send the word to the rest of the world that we do not believe in the laws that we have.

Mr. GEKAS. The time of the Chairman has now expired.

We yield to the lady from Texas for a round of questioning for 5 minutes.

Ms. JACKSON LEE. Thank you very much, Mr. Chairman; and I do thank you for holding this hearing.

Mr. Chairman, let me ask a parliamentary inquiry. I have a number of questions. I would like to have a second round.

Mr. GEKAS. I am not sure about the second round, so why don't you begin with the first?

Ms. JACKSON LEE. Well, I won't be able to complete my questions in one round. I hope you will consider a second round.

Mr. GEKAS. We will ask the panel right now if they are willing, and I hope they are, to answer questions submitted in writing following this hearing.

Mr. ROONEY. Yes.

Ms. PHILBIN. Yes.

Bishop WENSKI. Yes.

Mr. BECK. Yes.

Mr. GEKAS. The lady may proceed.

Ms. JACKSON LEE. I will be making comments about this hearing through an opening statement and may have some questions, and I will not submit any in writing because I believe they should be in the public hearing. In any event, I will look to speak to you individually in my offices if we have do not have a second round.

Let me thank the Committee for this hearing, particularly since it has moved to the authorizing Committee. Previously, I believe these proceedings have been before the Commerce, Justice and State, so I am very gratified for that.

I also want to acknowledge the long-standing work of Kevin Rooney and his leadership as the Acting Commissioner. I thank him very much for his presence here today, along with the other witnesses.

It is noted that President Bush has included in his fiscal year 2002 budget $100 million to implement the first installment of the President's 5 year, $500 million initiative to process all applications within 6 months and provide quality service. However, I must say that the $20 million reserved to go into premium processing fees has not yet been implemented.

I am equally concerned that there is nothing in the President's budget to decrease the current backlog. That is what is sorely needed. The long lines, the long waits, the long family separations all need to be addressed and fixed by this President and the incoming INS Commissioner after his confirmation.

I have only had the honor and privilege of being the Ranking Member as a first term and now a second term; and throughout my tenure I have worked steadfastly for family reunifications, treating and recognizing that this Nation—treating immigrants with dignity and recognizing that this Nation is a country of laws but it is also a country of immigrants.

I am also aware than within the INS budget there is an unusual, huge amount of money for border enforcement and detention and removal. However, there needs to be, additionally, a reflection on civil and human rights training.

Of particular concern is the degree to which Border Patrol agents have been trained in civil rights and human rights matters. There continue to be reports of civil rights violations along the border, including reports of American citizens who might not look American being harassed by Border Patrol agents.

I have been a long-standing supporter of increasing the number of Border Patrol agents at the border, providing them with professional development training, ensuring that their compensation is at a very high level. I want them to be at a very high level of professionalism, and I thank them for their service. But along with providing them with the resources I also think it is important for them to have that kind of training. But I will also be looking for addi-

tional equipment that helps them do their work during nighttime hours.

The number of people being detained by the INS has tripled in the last 3 years, making INS detainees the fastest-growing population in the country. The INS detention budget is now over $1 billion. More than 22,000 persons are currently detained.

I have done a lot of work on unaccompanied alien children. I look forward to having hearings on this issue. I believe this is something that all of us can realize that there should be improvement.

Most of the lawyers that have the responsibility of representing these children indicate that the facilities are harsh and that we should look to other alternatives. Approximately 30 percent are still regularly detained in country or municipal juvenile correction centers, despite the fact that many of these minors have not committed any crime.

I would also like to have the INS consider alternatives to detention as well; and I believe, Mr. Chairman, we need to look to fixing what happened in 1996. We need to repeal the most punitive aspects of the 1996 immigration law. We need to treat refugees better. Because, obviously, many of them look to this Nation for a sense of refuge, as the word indicates, and a sense of freedom.

I would like the entire statement to be submitted into the record, and I have some questions at this time.

Mr. GEKAS. Without objection, the statement will be admitted into the record.

[The prepared statement of Ms. Jackson Lee follows:]

PREPARED STATEMENT OF THE HONORABLE SHEILA JACKSON LEE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

Thank you Mr. Chairman. It is gratifying to have this oversight hearing on the INS budget and its mission. For the past few years, the authorization oversight for the Justice Department and the INS has been handled by the Commerce, Justice, State appropriations Subcommittee, so it is glad to have these hearings back where they belong, in the House Judiciary Committee.

Several weeks ago, I met with Kevin Rooney, the Acting Commissioner for the INS, who is with us today, and we discussed the INS budget, and immigration policy overall. He informed me then that President Bush had included in his FY 2002 budget, $100 million to implement the first installment of the President's five year, $500 Million initiative to process all applications within six months and provide quality service. However, I must say I am troubled that the $20 Million reserved to go into premium processing fees has not yet been implemented, and am equally concerned that there is nothing in the President's budget to decrease the current backlog. That is what is sorely needed. The long lines, the long waits, the long family separations . . . all need to be addressed and fixed by this President, and the incoming new INS Commissioner after his confirmation.

I am also aware that within the INS budget there is the usual huge amount of money for Border Enforcement and detention and removal. However there needs to be *Civil and human rights training*. Of particular concern is the degree to which border patrol agents have been trained in civil rights and human rights matters.

There continue to be reports of civil rights violations along the border, including reports of American citizens who might not look "American" being harassed by border patrol agents. The Subcommittee should ensure that funding for border enforcement include training in civil rights and human rights matters for Border Patrol officers.

The number of people being detained by the INS has tripled in the past three years, making INS detainees the fastest growing population in the country. The INS detention budget is now over $1 billion a year. More than 22,000 persons are currently detained by the INS, and the number is growing. However, along with detention, the INS absolutely needs to be concerned about the growing issue that many, many Members are concerned about, and that is *Unaccompanied Alien Children:* We are concerned about the increasing numbers of unaccompanied minors being held

in INS detention. Unaccompanied minors should be placed as much as possible with family members, in foster care, or in privately run shelter-care facilities. Yet approximately 30% are still regularly detained in county or municipal juvenile correction centers, despite the fact that many of these minors have not committed any crime, are not considered a flight risk, and do not present disciplinary problems. Detention in these jails, greatly impairs the minor's access to counsel, and the inherently harsher conditions of confinement can result in the minor being demoralized.

Also, I would really like the INS to consider Alternatives to detention. INS needs to actively engage in the search for alternatives to detention which are more cost-effective and more humane rather than requesting over 1600 beds. We need to make clear to the INS its support for the small amount of funding that would be necessary to operate alternative programs. Such funding should be available. Those who are not threats to the public safety and not flight risks should be released from detention, and the people who will be granted T and U visas who are victims of trafficking and are battered immigrant women should not be detained. Viable alternatives to detention for deserving individuals could save millions of dollars in detention costs.

INS already has tremendous backlogs; how is it going to be able to manage and respond to its new and changing workload? Is President Bush's call for $500 million to be dedicated to reducing the backlog in immigration benefits over the next five years enough to meet the stated goal of reducing waiting times for all immigration benefits to six months?

Fix '96

Also Mr. Chairman, we need to repeal the most punitive aspects of the 1996 immigration law, while restoring an overall sense of fairness and equity to our system of immigration and naturalization. I hope the Subcommittee will act to correct some of the harshness of the '96 law.

Refugees

The President did not submit much information concerning the plight of refugees. There is concern that in recent years there has been a decrease in the U.S. Government's efforts to protect refugees as compared with the record increases in the number of refugees and internally displaced people throughout the world. There currently are approximately 14 million refugees and internally displaced persons throughout the world with Africa being the world's largest refugee-producing continent. We believe that funding for refugee resettlement in FY 2002 should be sufficient to resettle 100,000 refugees into the United States, as well as providing torture victim and trafficking victim assistance. We also need to pay particular attention to resettling especially vulnerable populations of refugees, such as unaccompanied refugee children, women and refugees from Africa. Thank you Mr. Chairman and I hope these issues can be considered.

Mr. GEKAS. Out of deference to the Ranking Member, who is entitled to an opening statement, we will begin the time clock now on the questions that you are posed to render, thus allowing your statement to be exactly that.

Ms. JACKSON LEE. Thank you very much, Mr. Chairman.

I would like to raise a question regarding the budget and the focus that I think is very important.

Commissioner Rooney, we have noted the continuous backlog. In fact, one of the difficulties in meeting the April 30 deadline on 245(i) was not only the late regulatory process where the regs came out I think at the end of March but also, obviously, the huge push and then the backlog of staffing in terms of taking the applications. But in light of the extraordinary new missions that the INS will have in this and future years, including new V and K visas and new trafficking visas, the designation of E-1 Salvador for TPS, the extension of TPS for Honduras, Nicaragua and the increased number H-1 B visas, why did the administration fail to ask for $100 million in new money for backlog reduction and infrastructure improvements that the President and Attorney General promised?

Mr. ROONEY. Ms. Jackson Lee, the $100 million which I think you have outlined in your remarks, the new money, the money will

be there. There is $45 million in new money, $35 million in money that is in the base, and then $20 million that we would realize from the premium processing fee, which we expect, frankly, to be quite successful.

Ms. JACKSON LEE. You still do not get—I still think you are sort of shortchanging or having a shortfall. Are you thinking you will be able to meet the requirement of the backlog that is so egregious with that amount of money and wouldn't need additional funding?

Mr. ROONEY. The 5-year plan to do that is to get it down to the 6-month processing time, and we are getting there.

I know there are still some real horror stories. But we have cut some of the processing times down—for naturalization processing, the average time was 28 months just 2 years ago, and now it is down to 6 to 9 months. So we believe it is going to take time but the 5-year plan at $100 million a year we believe is going to be able to allow us to accomplish that. I think probably we would not be able to do more than that for the money we are asking.

Ms. JACKSON LEE. Tell me what is the status of the agency with respect to improving its technology database?

Additionally, I would like to secure your commitment to work with me. I am concerned—I think both of us discussed the very tragic incident regarding a Border Patrol agent at night. I would hope that some of the funds could be utilized for night equipment to protect them, because they do do a lot of work at night. Whether they have enough of that kind of equipment, so I would be interested in that.

But I would like to know, since we worked very hard on increasing funding in previous years to upgrade your technology, where are you in that?

Mr. ROONEY. One of the things we have done, we took a lot of criticism, the agency did, from the GAO for not having an effective plan for data systems; and in many instances, as the money came in over the recent past few years, some of the programs actually developed applications that would be supportive of their individual programs and not a total picture from the agency perspective. We are committed—in fact, we have actually been recognized for our planning in this area—now to come up with an enterprise architecture laying out what our data systems plans are.

And then I have already participated, in the short time I have been here, in two high-level boards where the Commissioner and the Executive Associate Commissioners of the agency reviewing all data systems' plans to get funding, commentary and results anticipated before any of the projects are approved. It seems to me there is a strong commitment there, and we certainly would work with you.

Ms. JACKSON LEE. I think that is very important.

Let me offer another opportunity for us to work together. I notice there are requests for detention removal initiatives. I am very interested in the accommodations for children, the unaccompanied children, opportunities for parent and child to be together, whether or not there were any counseling services. I think that is extremely important. We shouldn't just have dollars for beds and detentions, bricks and mortar. We need to have recognition that these are children whose circumstances may be not of their own choosing at this

point in time and that they do have the opportunity if they are in this country to access legalization. I think that is extremely important.

I do have some additional questions in particular to—and I thank you, Mr. Rooney, very much and thank the other witnesses for their testimony.

I do have some questions now for Mr. Beck, and I do appreciate the fact that we have a first amendment and a right to associate and have the views that we particularly think are important, but I would like to ask you——.

Mr. GEKAS. The lady is yielded an additional one and a half minutes.

Ms. JACKSON LEE. I thank the Chairman very much.

You described the greatest outrage to American citizens is the open congregating of illegal workers on their community streets. You cite as evidence day laborers who seek work on the street in West Los Angeles. You argue that most of these workers are illegal immigrants. Do you base this conclusion on the color of their skin? Do you reach this conclusion based or their accent? How do you make this determination?

Frankly, I want to acknowledge the INS officers in Houston, Texas, that were just noted on the front page of the Houston Chronicle as having broken a very large smuggling ring. I think our INS agents are working, but I think they also have a sense of balance in this country that we are a country of immigrants and certainly, unless we do a massive overhaul of our policies, that this is a country that welcomes those that come legally and attempts to provide access to legalization for those who may be here and be in the position of being reunited with their families.

How are you making those comments in your testimony?

Mr. BECK. I believe the comments in my testimony were quoting the citizens in terms of their characterization.

One of things that happens in communities is that people do see a large number of people who are obviously from other countries speaking other languages, and there is a real mixing in terms of who is legal, who is not legal, and there is no question that people make errors in terms of believing that more people are illegal than are.

However, based on talking to the INS agents and from the literature on this, there is not reasonable doubt that in all cases of street hiring sites there are illegal aliens present and often a majority. But certainly it would not be a matter of being a color of skin or where somebody is from. We would reject that.

And I would just, if I could, comment I think we are a Nation of immigrants and a Nation of laws, and we would want to welcome those who the public, the citizens through their representatives, decide should come, but I do not think we should give any welcome to people who come illegally. By welcoming, we invite millions more to come.

Mr. GEKAS. The time of the lady has expired.

We yield to the gentleman from Texas, Mr. Smith, for 5 minutes.

Mr. SMITH. Thank you, Mr. Chairman.

Commissioner Rooney, in your prepared remarks today you have mentioned that the INS has removed 362,000 illegal aliens in the

last 2 years, 126,000 of whom were criminals. I am just wondering how many individuals were removed from the interior who were not criminals.

Mr. ROONEY. I don't have that breakout, Mr. Smith.

Mr. SMITH. Let my furnish a possible answer, which is not very many. The previous administration I think basically decided to ignore interior enforcement and the result was we had this flashing neon welcome sign to people wanting to come into the country illegally that simply said, you get past the border, you are home free. You have passed go, and you are going to get a reward. I hope the new administration, yourself included, is committed to interior enforcement. Are you?

Mr. ROONEY. Yes, absolutely Mr. Smith. As I indicated in my testimony, we are really making a lot of effort in that regard. We well recognize the fact that what is happening now is as we have sealed off some of the entries at the border, people are coming into the interior of the country, and we are at the moment focusing on quality cases. We are talking about there where they are smuggling—as a matter of fact, the case that Ms. Jackson Lee mentioned in Houston where the 21 defendants pleaded guilty——.

Mr. SMITH. But, on the whole, you are going to do a better job of interior enforcement than the previous administration.

Mr. ROONEY. Absolutely.

Mr. SMITH. Mr. Beck, you made it clear in your testimony what you think about the lack of enforcement of removing illegal immigrants from the interior. I was going to ask you about another subject. This goes to what you think the impact of our immigration policy is on American workers and recent legal immigrants themselves.

Mr. BECK. As I said at the beginning, our primary focus is to carry out unfinished recommendations to the Jordan Commission which made it very clear that our legal immigration numbers are so high that they cause economic injustice in the country. They harm the most vulnerable American workers. Illegal immigration is doubly or triply so partly because of the makeup of illegal immigrants. Illegal immigration is not a victimless crime. Legal immigration, although the immigrants are doing nothing wrong, the numbers can be so high that they do depress wages for the most vulnerable people in this country; and certainly we have seen a mass of articles and studies in recent months about what has happened to the people on the bottom of the ladder.

Mr. SMITH. I think we have both seen some of the same studies. I think there were three or four, all by reputable, credible organizations, where the estimate was anywhere from $1,200 to $2,400 that blue collar workers were sacrificing in wages because of unfair competition with other folks who are in the country.

Mr. BECK. That is a better answer than mine.

Mr. SMITH. Bishop Wenski, in your opening words today you said that you would prefer that not so many individuals be detained, particularly asylum seekers; and I was going to mention a figure to you to ask if you are aware of it. That is, a couple of years ago a study was made of these individuals who filed for asylum and were thought to have fraudulent claims; and before we changed the law we found out that of all the individuals that we directed to

show up for subsequent hearings, in fact, only 6 percent did so; 94 percent never showed up for the hearings. Don't you think that if we did not detain these individuals we would have the same problem where individuals would not show up for their hearing and, therefore, we might as well not enforce the laws?

Bishop WENSKI. I think there is evidence that when there are board programs and release programs that you can have a significant number of people that do, in fact, show up for their hearings.

Mr. SMITH. As I say, when we tried it before, we changed the law. I am surprised 6 percent showed up, to tell you the truth, but anyway only 6 percent showed up.

Mr. Rooney, I am interested, as you are and as you said in your testimony, about increasing the number of Border Patrol agents and also retaining those who are already hired. What is the INS going to do to make sure we do not have such a high turnover rate? What can we do to attract more Border Patrol agents? And I compliment the administration in their budget for requesting almost 600 new Border Patrol agents themselves.

Mr. ROONEY. Thank you, Mr. Smith. We have—from what my understanding is, there has been a poor history of attracting agents and meeting the turnover. A major effort was undertaken in the past year and a half, I guess principally a couple years, and we have trained 300 Border Patrol agents as recruiters—not full-time recruiters but to go out—as a matter of fact, just out on the Mall here last week I met the principal one, a very impressive young man—and they go around all over the country in their local areas recruiting Border Patrol agents. And we are actually in the position now where we anticipate no problem. It is a matter of getting the people into the classes and completing the 17-week program in time.

Mr. SMITH. That is welcome news.

Thank you, Mr. Chairman.

Mr. GEKAS. We thank the gentleman. We now turn to the gentleman from—is it Mr. Cannon or Mr. Issa first?

The gentleman from California is recognized for 5 minutes.

Mr. ISSA. Thank you, Mr. Chairman. I will try to use less than the 5 minutes .

Bishop Wenski, my question to you, in your comments you mention making the 245(i) permanent. From a practical standpoint, would not that guarantee that anyone who came here with a visa could then—of any sort, including a tourist visa—could then overstay and essentially bypass the immigration process and get permanent status or at least be in the country and stay in the country through the process?

Bishop WENSKI. No, not really. Because the benefit is when they have a remedy available. Not everybody that would come in on a tourist visa would have a remedy available to them.

Mr. ISSA. I didn't say they would never leave, but would not they effectively come in over the Canadian border for a day and say, I am here now and I would like to spend the next 2 years unincarcerated in the process of checking this out.

Bishop WENSKI. I don't believe that would be the case.

Mr. ISSA. Isn't that what happens today, Bishop?

Bishop WENSKI. I would not be able to say on every case. But the benefit that this particular legislation provides is for people—that it benefits the American family members of aliens here because it allows them to keep their relative here and not having that relative having to return to their home country and maybe wait for several years before being reunited with their American citizen son or daughter or——.

Mr. ISSA. Bishop, isn't it true that your organization has essentially always advocated open borders?

Bishop WENSKI. No.

Mr. ISSA. So you believe that we should enforce our boarders. We should have a right to refuse to take any or all that we choose to.

Bishop WENSKI. The church has always recognized the sovereignty of countries and the right of the country to enforce borders. But we say that enforcement should be done in a just way, a fair way and a humane way.

Mr. ISSA. In your comments, you said a generous way.

Bishop WENSKI. Why not a generous way, too? Because it benefits the immigrant but also the native American.

Mr. ISSA. Thank you.

Mr. Rooney, I think the remainder of my questions would go to you.

In my district in San Diego, Orange, Riverside County area, we have about 2,200 Border Patrol agents, about 100 INS agents. The Border Patrol was stripped of any and all ability to seek undocumented immigrants seeking work illegally or doing anything else and limited only to a few checkpoints at the border and the interior. Do you think that is a wise policy to have so much, if you will, on the line and nobody for those who get through?

Mr. ROONEY. The policy that the agency developed in the past few years of putting the agents on the line for the deterrent effect is working.

As to the number—I don't have the breakout as to—and perhaps if somebody has that as to whether or not any of the agents are dropped back would be a different story. But the policy of keeping the agents on the line in San Diego and surrounding, the border area around there, and in El Paso and McAllen, Texas, and Arizona, et cetera, has actually had a significant effect on deterring entry and, as a result, a significant decrease in apprehensions which we take as being a positive number because if—because we are not apprehending them because they are not coming through.

Mr. ISSA. I appreciate that. But if there is already 9 million illegals here working and taking away jobs and bypassing the system, then I would not necessarily say there is any reason to lock up the corral anymore. The cattle have all left, so to speak.

One other—and so I gather there is no change anticipated in bringing real enforcement against the employer or the undocumented who is working illegally.

Mr. ROONEY. No, as I said to Mr. Smith, Mr. Issa, interior enforcement is something that we expect very much to be emphasizing.

Mr. ISSA. I look forward to seeing that. I will tell you that in my district it is nonexistent.

I have one more question. Ever since the Border Patrol was enacted, you have had Border Patrol at the border; and then in my case, some 70 miles north of the border, both in San Diego County limits, on I-15 and on the 5, you have had secondary checkpoints. I would ask you a question. In light of the effort to no longer racial profile, in light of the rights of American citizens, don't you think that, although perhaps somewhat effective, that those border checkpoints are an unfair and unreasonable infringement on the rights of American citizens simply because they happen to live near a border?

Mr. ROONEY. No, I don't believe so. The checkpoints, which have been court tested as to their fairness, provide a very valuable check for us of people who have come in and then are routed along the major highway traveling north.

Mr. ISSA. Mr. Chairman, if I could have another 30 seconds.

Mr. GEKAS. The gentleman is accorded an additional one and a half minutes.

Mr. ISSA. Would it surprise you to know that those checkpoints are apprehending less than seven people a day, on average?

Mr. ROONEY. Yes, it would.

Mr. ISSA. I think you will find that to be true; and, if it is not, please follow up with me because we got those by visiting the checkpoints and meeting with them.

I am here today to say those secondary checkpoints are mostly about feel good, and I don't think they are a reasonable balance. I don't think these people on the secondary checkpoints were put into service rooting out those people who bypass the primary checkpoint. You would have a far higher apprehension and less jobs available to those who circumvented the system.

Thank you. I forward to any written remarks you have.

Mr. ROONEY. Thank you. I will be glad to respond.

Mr. GEKAS. The Chair thanks the gentleman.

I will now yield 5 minutes to Mr. Cannon.

Mr. CANNON. Thank you very much, Mr. Chairman.

I would like to thank the panel for being here today and sharing your thoughts with us; and Mr. Beck in particular, your statement from Barbara Jordan, which we can all agree with essentially, that we need to have a consonance between the rules of immigration and the reality.

Would you, Mr. Beck, describe your relationship with Dr. John Tanton, please.

Mr. BECK. Dr. Tanton is the publisher of The Social Contract, and I have served since about 1991. I have been listed as the Washington editor, which is an unpaid part-time correspondent.

Mr. CANNON. If you have any further relationship with Dr. Tanton, I would be happy to hear of it.

Mr. BECK. I first met Dr. Tanton in the 1970's when I was an environmental reporter for the Grand Rapids Press. He was one of the premiere environmental activists in Michigan, and I covered him several times during that decade.

During the 1980's, as a journalist covering immigration for various newspapers, he was one of the people I would encounter from time to time as a source.

In 1990, after being a Washington correspondent for the Booth newspapers, I decided to work full time researching and writing about immigration with books, magazine articles and whatnot and at that point met Dr. Tanton again and began to serve as the Washington editor for The Social Contract.

Mr. CANNON. According to this filing which I have marked as exhibit one which we will make part of the record, your organization, NumbersUSA.com, also operates under the name U.S. Inc., and that is run by Dr. Tanton, is that correct?

[The material referred to follows:]

1999 NONPROFIT CORPORATION INFORMATION UPDATE #1

[X] *To certify there are no changes from your previous filing check this box and proceed to Item 6.*

If the resident agent and/or registered office has changed complete Items 1-6. If only officer and director information has changed complete Items 4-6.

IDENTIFICATION NUMBER	CORPORATION NAME
891152	U.S.

Resident Agent Name and Mailing Address of the Registered Office

JOHN H TANTON
445 E MITCHELL ST
PETOSKEY MI 49770

FILED BY DEPARTMENT JAN 4 2000

01/12/2000 CSALKELD
Trans 01789221
0 0 Total$10.00
Crps Non Profit Annual Report

The Address of the Registered Office
445 E MITCHELL ST
PETOSKEY 49770

1. Mailing address of registered office in Michigan (may be a P.O. Box)	2. Resident Agent

3. The address of registered office in Michigan (a P.O. Box may not be designated as the address of the registered office)

4. Describe the purpose and activities of the corporation during the year covered by this report.

5. NAME	BUSINESS OR RESIDENCE ADDRESS
President (Required) (Chairman) John H. Tanton	445 E. Mitchell St., Petoskey, MI 49770
Secretary (Required) Niki Calloway	8031 Hedrick Rd., Harbor Springs, MI 49740
Treasurer (Required) (Controller) Faith Peruzzi	1011 Old Tannery Crk., Petoskey, MI 49770
Vice President	
Director (Required) John Rohe	438 E. Lake St., Petoskey, MI 49770
Director David Irish	669 E. Bluff Drive, Harbor Springs, MI 49740
Director Mary Lou Tanton	2957 Atkins Rd., Petoskey, MI 49770

6. The filing fee is $10.00. Please make your check or money order payable to the State of Michigan. This report must be filed on or before October 1, 1999. Return report and fee to: Michigan Department of Consumer and Industry Services
Corporation, Securities and Land Development Bureau
P.O. Box 30057
Lansing, MI 48909-7557
(517) 334-6300

Signature of an authorized officer or agent	Date	Phone (Optional)
Niki Calloway	12/30/99	231-347-1171

If more space is needed, additional pages may be included. Do not staple any items to the report.
This report is required by Section 911, Act 162, Public Acts of 1982, as amended. Failure to file this report may result in the dissolution/revocation of the corporation.

C&S 2000 (Rev. 6/98)

MICHIGAN DEPARTMENT OF CONSUMER AND INDUSTRY SERVICES
CORPORATION, SECURITIES AND LAND DEVELOPMENT BUREAU

Date Received

FILED (BUREAU USE ONLY)

MAR 0 2 2000

Administrator
CORP. SECURITIES & LAND DEV. BUREAU

02/28/2000 KMATSON
Trans 01858750
891152
9857
Total$10.00
Crps Org & Filing & LLC art

Name
U.S.

Address
445 E. Mitchell St.

City	State	Zip Code
Petoskey	MI	49770

Document will be returned to the name and address you enter above

EXPIRATION DATE: DECEMBER 31, 2005

CERTIFICATE OF ASSUMED NAME
For use by ~~Corporations, Limited Partnerships and Limited Liability Companies~~
(Please read information and instructions on reverse side)

Pursuant to the provisions of Act 284, Public Acts of 1972 (profit corporations), Act 162, Public Acts of 1982 (nonprofit corporations), Act 213, Public Acts of 1982 (limited partnerships), or Act 23, Public Acts of 1993 (limited liability companies), the corporation, limited partnership, or limited liability company in item one executes the following Certificate:

1. The name of the corporation, limited partnership, or limited liability company is:
U.S.

2. The identification number assigned by the Bureau is: 891-152

3. The location of the corporation or limited liability company registered office in Michigan or the office at which the limited partnership records are maintained is:

445 E. Mitchell St.	Petoskey	MI	49770
(Street Address)	(City)	(State)	(ZIP Code)

4. The assumed name under which business is to be transacted is:
NumbersUSA.com

COMPLETE ITEM 5 ON LAST PAGE IF THIS NAME IS ASSUMED BY MORE THAN ONE ENTITY.

Signed this 24th day of February, ~~19~~ 2000

By Faith Peruzzi
(Signature)

Faith Peruzzi (Type or Print Name) Controller (Type or Print Title)

(Limited Partnerships Only - Indicate Name of General Partner if a corporation or other entity)

Mr. BECK. Numbers USA operates only under Numbers USA. We are a programmatically autonomous group project that operates under an umbrella—it's a 501(c) organization in Michigan. U.S. Inc. is run by Dr. Tanton, and that organization has about 30, 32 nonprofit projects—recycling, environmental, preservation, language projects—and it is set up to allow groups to not have to have their own auditors and legal systems. Instead, we are able to be an autonomous group that uses the U.S. Inc. auditing services.

Mr. CANNON. Are you aware that on April 17, 1998, Dr. Tanton wrote a letter that was sent to all FAIR members in Michigan that read, "the time has come for the immigration reform unit to move into its next phase, defeating our opponents at the polls and electing our supporters in their stead. He is—'referring to Abraham'—

not going to change. We need to usher our opponents out and seek colleagues who agree with us."

Mr. BECK. When was that written?

Mr. CANNON. April 17, 1998.

Mr. BECK. I am sure that—I have heard things like that. I don't remember that precise—I am not part of FAIR.

Mr. CANNON. We have an exhibit we will submit as number two. It was directed to FAIR members in Michigan and signed by John Tanton M.D., Founder. Does that ring a bell?

Mr. GEKAS. Does the gentleman wish to submit that for the record?

Mr. CANNON. I would.

Mr. GEKAS. Without objection.

[The material referred to follows:]

#2

John H. Tanton
2957 Atkins Road
Petoskey, Michigan 49770-9531
17 April, 1998

To: FAIR members in Michigan

Re: The next phase in the Immigration Reform Movement

Dear Friends and Colleagues:

The time has come for the immigration reform movement to move into its next phase—defeating our opponents at the polls and electing our supporters in their stead.

When I started FAIR back in 1979 it was nothing more than an idea in the heads of a small band of people—six to be exact. We had no money, no members, no position papers, and no influence. We've spent the last nineteen years remedying all these deficiencies, gaining a solid reputation and political influence along the way.

But we're still on the outside looking in, asking "pretty please" for the likes of Senator Abraham to adopt our views on immigration. It's not going to happen ... he's not going to change. We need to usher our opponents out and seat colleagues who agree with us.

Around our country a number of our supporters are trying to do just that—running for U.S. House of Representative seats, and even the U.S. Senate, as Bob Park is in Arizona. But that option is not open to most of us.

There is, however, something that each one of us can do: we can run for precinct delegate for our own political party, and once elected push from inside the system for immigration reform (for such items as a moratorium on immigration). This costs no money, just a bit of time. I have filed for delegate in my home precinct, and hope you will too.

To that end, I enclose a copy of the form to be used to file with your county, township or city clerk for the post of precinct delegate. This form is applicable for the Republican, Democratic or Reform parties. **Filing deadline: 4:00 PM (not 5:00 PM) on Tuesday, May 12.**

Please take this step, and help us move the immigration reform effort into its next phase. Once you are elected, I'll be glad to work with you to develop sample resolutions, etc.

If you have any questions, please let me hear from you.

Sincerely,

John Tanton M.D.

John H. Tanton, M.D., Founder
Federation for American Immigration Reform (FAIR)

P.S. This mailing has been paid for entirely with my own funds.

Mr. CANNON. Let me hand that to you so you can look at it as I ask the next question.

I'm sorry. Would you hand that to Mr. Beck?

The question is, did that letter go to the members of FAIR. Are you aware of that?

Mr. BECK. I'm sorry, your question?

Mr. CANNON. Did that letter actually go to the membership of FAIR?

Mr. BECK. I'm sorry, I don't know, Congressman.

Mr. CANNON. Do you recognize the letter at all?

Mr. BECK. I don't think I have seen this.

Mr. CANNON. Is the relationship of Mr. Tanton to FAIR such that he could send a letter without your knowing it?

Mr. BECK. I am not a part of FAIR.

Mr. CANNON. Are you not a member of the board?

Mr. BECK. No I am not a member of the board of FAIR. I am not connected to FAIR in any way. Dr. Tanton is on the board of FAOR.

Mr. CANNON. During 1999 or 2000, any time previous, did Dr. Tanton or anyone associated with the organization FAIR discuss with you their desire to see Senator Abraham defeated for reelection or efforts they might undertake to further that goal?

Mr. BECK. Dr. Tanton 's participation was major public record. It was written repeatedly throughout the year 2000.

Mr. CANNON. Did he talk to you about using the organization FAIR to help promote that idea?

Mr. BECK. No, I never heard anything like that. As I say, I am not part of FAIR, so I would not know.

Mr. CANNON. But you have discussions with Dr. Tanton. The question is, did he ever talk to you about using the organization FAIR to do that?

Mr. BECK. No. Dr. Tanton is perfectly capable of speaking for himself, but I can answer your questions from my standpoint.

Mr. CANNON. Right. I have for the record a letter marked three which I would like to submit, Mr. Chairman.

Mr. GEKAS. Without objection.

[The material referred to follows:]

Dear Immigration Reform Supporter,

Let's sink the SPENCO-DE-MAYO! [pronounced 'spenso de my-o']

SPENCO-DE-MAYO is the name that Senator Abraham of Michigan gave to his big campaign fundraising bash held on board Amway Corporation's yacht in Washington, DC last Spring.

The fundraiser was held on the same day as the Mexican holiday CINCO-DE-MAYO (5th of May)—hence "SPENCO-DE-MAYO."

Abraham was probably laughing over his play on words as he held out his bag hand for big campaign contributions from the fact cat corporate lobbyists and immigration lawyers that clambered aboard the Amway yacht for his special SPENCO-DE-MAYO fundraiser.

You see, more than any other member of Congress, Senator Abraham has worked to undermine our laws against illegal immigration from Mexico and other countries, and increase the flood of one million immigrants that enter our country legally every year.

That's why I'm counting on you to make sure that the SPENCO-DE-MAYO bash winds up being the biggest waste of money in next year's election.

You can do that by making the most generous contribution you can to the Michigan Immigration Political Action Committee (MichImpac) today. MichImpac has just been formed to support or opposed candidates for public office based on their stand on immigration.

Its SOLE GOAL for the year 2000 is the DEFEAT SENATOR ABRAHAM, and all monetary resources will go to that cause. Please consider doing your part by sending $35, $50, $100, $500, or as much as you can afford to give at this time. Your support is critical, as I'll explain.

First, in case you have any doubt, let me remind you why we must stop Senator Abraham from being re-elected.

Spencer Abraham has demonstrated his total support for mass immigration which is flooding our country with non-English speaking aliens, overcrowding our schools and public hospitals, and threatening our entire way of life.

Here are just a few examples of what he has done to undermine our laws and promote mass immigration.

- He rammed ILLEGAL ALIEN AMNESTIES through Congress to give permanent residence to more than 500,000 illegals from Central America and the Caribbean.

- He doubled the number of foreign workers brought in to fill high-paying jobs through the fraud-ridden H-1B program.

- He helped defeat an increase in fines for employers caught hiring illegal aliens.

When Spencer Abraham was elected U.S. Senator from Michigan in 1994, few Michigan voters had any inkling of his extremist philosophy. He ran as a conservative Republican and said little about immigration.

When the Republicans took control of Congress in the elections that year, the hops of immigration reform advocates ran high. Control of the House and Senate immigration committees passed into the friendly hands of Representative Lamar Smith (R-TX) and Senator Alan Simpson (R-WY).

In 1996, these committees chairmen sponsored comprehensive legislation based on the well-thought-out recommendations of the U.S. Commission on Immigration Reform. As drafted, the bills would have made many huge strides toward stopping illegal immigration and restoring lower, traditional levels of legal immigration.

But, it was not to be.

Suddenly alarmed by the possibility that they might have only American workers to recruit for U.S. jobs, big corporations allied themselves with left-wing multiculturalists and ethnic pressure groups to mount an all out campaign against the legislation.

They found an eager ally in Spencer Abraham.

Backed by the power of the big business lobbies, Abraham persuaded a sizable bloc of Republicans to vote against their leadership's own bill. When their votes were added to near total opposition of congressional Democrats, it was enough to overwhelm Simpson and Smith and gut the strongest reform measures in the bill.

For Abraham's treachery, he was given the highest award possible by the National Council of La Raza, a radical left-wing Hispanic pressure group.

The irony of the award drew national attention. Syndicated columnist Georgie Anne Geyer commented, "Mr. Abraham, who is virulently and uncritically pro-immigration, recently allowed himself to be feted by the National Council of La Raza, a radical Hispanic activist group..."

But things got even worse.

When Alan Simpson retired from the Senate in 1997, Abraham's grateful big business allies used their influence with the Republican leadership to have him appointed chairman of the Senate immigration subcommittee.

After becoming chairman, Abraham's support for mass immigration has been even more open. He has worked closely with the immigration lawyers' lobby and other special interests to roll back or undo the tentative gains made in the 1996 election.

As immigration subcommittee chairman, he has looked on quietly as the Clinton Administration has virtually abandoned its duty to enforce our immigration laws.

Since he became chairman, over on million more illegal aliens have invaded our country to permanently settle here with no end in sight.

Meanwhile, polls show that American people are overwhelmingly opposed to the mass immigration that Abraham and special interest groups favor.

That's why we must get the facts Abraham's pro-mass immigration record to the people of Michigan before they vote in the year 2000 elections.

Mr. CANNON. You wrote a fund-raising letter for a Political Action Committee, Michigan immigration PAC. And the sole purpose of Michigan immigration PAC was, according to the website, to defeat Senator Abraham, is that correct?

Mr. BECK. Yes, yes. Just to make clear, I did that as a private citizen. It had nothing to do with Numbers USA.

Mr. CANNON. Is it fair to say that you and Dr. Tanton and others associated with you wanted to defeat Senator Abraham?

Mr. BECK. As a private citizen, yes.

Mr. GEKAS. The gentleman is yielded an additional one and a half minutes.

Mr. CANNON. Thank you, Mr. Chairman.

You then were also coordinating advertisements in Michigan that mentioned Senator Abraham by name. Those ads also mentioned H-1 B visas. Those ads were run by nonprofit groups called the Coalition for the Future American Worker and Americans for Better Immigration, is that correct?

Mr. BECK. That is right.

Mr. CANNON. And the purpose of those ads was to hurt Senator Abraham's chances for reelection.

Mr. BECK. No, the purpose of the ads was to try to block the doubling of H-1 B visas as——.

Mr. CANNON. Pardon me, is that really, truly the purpose? When it passed 95 to 1 in the Senate and by a voice vote in the House, was it really your purpose to attack H-1 B visas or was it to attack Senator Abraham?

Mr. BECK. We were fighting H-1 B visa increases. All the organizations have been on record for a long time.

Mr. CANNON. You spent $2 million against Senator Abraham and virtually—actually, nothing until about a week before Senator Abraham referred your organization to the IRS. You are telling me this was about H-1 B visas when it was $2 million spent by the associated groups in Michigan against Senator Abraham.

Mr. BECK. Senator Abraham never referred us to the IRS. I don't know where the numbers on the dollars are coming from, but we advertised all year, and we advertised throughout the country. We did not advertise just in Michigan. We advertised in many districts.

Mr. CANNON. How much did you spend in those other districts?

Mr. BECK. I am not at liberty to say.

Mr. CANNON. Not at liberty, or you don't know?

Mr. BECK. I don't know at this moment, but if I went back to look—but I am not at liberty to say how much we spent. But we could certainly talk some—I could find information in terms of how much time we spent in many districts. We advertised in many districts, asking the voters to exercise their rights as citizens to respond in terms of what they thought about the H-1 B doubling.

Mr. CANNON. Did you coordinate your advertising in any way with FAIR?

Mr. BECK. The Coalition for the Future American Worker included about 20 organizations, and FAIR was one of the members.

Mr. CANNON. So did you coordinate with FAIR? They knew what you were doing with the Coalition.

Mr. BECK. FAIR—members of the Coalition were a part of that.

Mr. CANNON. And you had discussions with people who were directing FAIR? They understood what you were doing?

Mr. BECK. Yes.

Mr. GEKAS. The time is up.

Mr. CANNON. I recognize my time has expired.

Mr. Chairman, thank you. I yield back.

May I ask to submit questions in writing?

Mr. GEKAS. Absolutely. I will repeat that.

Mr. BECK. I will be happy to talk further.

Mr. GEKAS. And each of the members of the panel have agreed, at least by a nod of the head, which would be reflected in the record, that they are willing to answer written interrogatories.

With that, we will thank the panel.

Ms. JACKSON LEE. Mr. Chairman, may I have a parliamentary inquiry, please, so I can be well aware and well informed of the rules of this Committee? Are there Judiciary Committee rules from the full Committee or are these Subcommittee rules limiting Members in important issues dealing with important legislative initiatives to one round of questioning? If Members would like to have another round of questioning, Mr. Chairman, I don't know why we are on some kind of clock that we can not have an additional round.

Mr. GEKAS. Of the decision as to whether there will be a second round, that is in the discretion of the Chair; and I have already informed Members on both sides that we will restrict it to the first round that we had. Knowing full well that this is a complex set of issues, we could be here all day with third and fourth and sixth rounds, and we would never, never really accomplish all of the questions that the lady from Texas might have or cumulatively the Committee might have.

Ms. JACKSON LEE. If the gentleman would be so kind as to yield, I would never put—I don't think any Member would put the Committee through that. We all recognize the constraints of the witnesses' time and ours, but certainly a second round—I know Mr. Cannon, and I am certainly not speaking for him. He said he would put his questions in the record. But he had a line of questions. I have a line of questions for a second round. These are important issues to be put on the record.

Mr. GEKAS. The Chair maintains its position that there will be no second round. However, I will at some future date entertain a request—entertain—that is, consider a request from the lady of Texas if there need be a reconvening of any one of the four or all the four members of the panel.

Ms. JACKSON LEE. If the gentleman would yield, finally, let me make a final statement and say, Mr. Chairman, I thank you for your kind response, but let the record show that I vigorously object to this limitation on Members' right to question. I think it is unfair, and I think that the likes of a witness like Mr. Beck and his association with The Social Contract, it would have been important to have had that information on the record. But I understand the Chairman, and I will have an official letter to you requesting that Members be allowed to have two rounds.

Mr. GEKAS. I will await the delivery of that letter.

Ms. JACKSON LEE. Thank you, Mr. Chairman.

Mr. GEKAS. The hearing is now adjourned.

[Whereupon, at 3:25 p.m., the Subcommittee was adjourned.]

APPENDIX

MATERIAL SUBMITTED FOR THE HEARING RECORD

PREPARED STATEMENT OF THE HONORABLE CHRIS CANNON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF UTAH

I would like to thank the chairman for holding this hearing on "INS and EOIR." It's clear the hearing is the first of many on important immigration matters this session and I appreciate his leadership in bringing this together.

I particularly think it's important that Roy Beck was allowed to participate as a witness at this hearing since it has provided the first opportunity for members of the Committee to question Mr. Beck about highly controversial political advertisements run by groups he leads or with whom he is affiliated.

On April 17, 1998, Dr. John Tanton, founder of FAIR, sent a letter to all FAIR members in Michigan that stated: "the time has come for the immigration reform movement to move into its next phase—defeating our opponents at the polls and electing our supporters in their stead . . . [Senator Abraham] is not going to change. We need to usher our opponents out and seat colleagues who agree with us."

Along with the statement of purpose the contents of the letter represent—the stated goal of defeating pro-immigrant federal elected officeholders—it's clear a plan was launched to utilize tax-exempt organizations in an effort to defeat Senator Spencer Abraham, chair of the Senate Immigration Subcommittee. As fundraising vehicles, tax-exempt organizations provide numerous advantages over political action committees: no limits on contribution amounts, the ability to withhold the names of donors, and the ability to receive donations that are tax-deductible or tax-exempt for its operations. Beck, Tanton, FAIR, and others associated with them were certainly willing to utilize these advantages.

In 1999, FAIR produced a widely-condemned advertisement that featured Senator Abraham, who is of Lebanese descent, alongside a photo of known terrorist Osama bin-Laden, asking: "Why is a U.S. Senator trying to make it easier for terrorists like Osama bin Laden to export their war of terror to any city street in America?"

Starting in 2000—the year Senator Abraham was up for reelection—FAIR, which is a 501(c)(3) organization on whose Board John Taunton serves, began working with Roy Beck to fund political advertisements designed to damage Senator Abraham's reelection campaign. Roy Beck heads a 501(c)(3) organization NumbersUSA.com, which is part of John Tanton's U.S. Inc. Roy Beck is also the Washington Editor of the publication "Social Contract," published by Dr. Tanton. It is clear that Roy Beck and FAIR were attempting to fulfill John Tanton's stated objective: of defeating Spence Abraham (and other federal officeholders) by creating a political organization funded illegally by tax exempt funds..

From April to October 2000, FAIR and two tax-exempt front organizations run by Roy Beck—the Coalition for the Future American Worker and Americans for Better Immigration—ran approximately $2 million in advertisements that mentioned Senator Abraham by name and were clearly designed to hurt his reelection campaign. In fact, one of the advertisements stated: "ask him how'd he [Abraham] feel if you gave his job away." As an elected office holder, the only way to accomplish that would be to vote against Senator Abraham.

Around the time that Senator Abraham sent a letter to the IRS requesting an investigation of FAIR and its activities through the Coalition for the Future American Worker, advertisements were run by the Coalition against members of Congress outside of Michigan, although there is no evidence these purchases amounted to more than nominal buys compared to the amounts spent in Michigan. Even then, the true intention of these advertisements—to influence political campaigns—was clear, since the ads were run primarily in House districts where incumbent legislators were engaged in tight reelection contests. Those districts included the seats cur-

rently occupied by Reps. Adam Smith (D-WA), Jay Inslee (D-WA), and Jim Kolbe (R-AZ)—all of whom won election in 1998 with less than 52% of the vote. In fact, FAIR Executive Director Dan Stein described the purpose of the ads: "We want to make immigration issues radioactive in *election years*." (Source: June 14, 2000, Technology Daily.) Ads were also ran against Speaker Hastert and Minority Leader Gephardt.

The idea that the tax-exempt Coalition for the Future American Worker and Americans for Better Immigration are independent organizations completely divorced from the 501(c)(3) group NumbersUSA.com is belied by the reciprocal web links among the organizations. For example, on the NumbersUSA.com web site under "Fight H-1B Abuse" one finds a direct link to Americans for Better Immigration. And on the Americans for Better Immigration website is a link that states "Send free faxes to Congress at NumbersUSA.com." As far as one can tell, the primary activity of NumbersUSA.com appears to be efforts to lobby Congress, which IRS rules prohibit as a primary or even substantial activity for a 501(c)(3) organization.

That Beck, FAIR, and Tanton sought Senator Abraham's defeat is crystal clear in a fundraising letter signed by Roy Beck as part of Michigan Immigration PAC, whose web site says its "sole goal for the year 2000 is the defeat of Senator Abraham." Yet FEC records show that Michigan Immigration PAC raised and spent only $25,000 against Senator Abraham's election, while FAIR, the Coalition for the Future American Worker, Americans for Better Immigration and related groups spent approximately $2 million between April and October 2000 in TV, radio, and newspaper advertisements that mentioned Senator Abraham by name. It's clear that the reason for this *80 to 1 disparity* is that a conscious decision was made by Roy Beck, John Tanton, and those associated with FAIR that the rules that govern political action committees are too constraining and do not provide the tax advantages of organizations with the tax status of 501(c)(3) or other non-profit status.

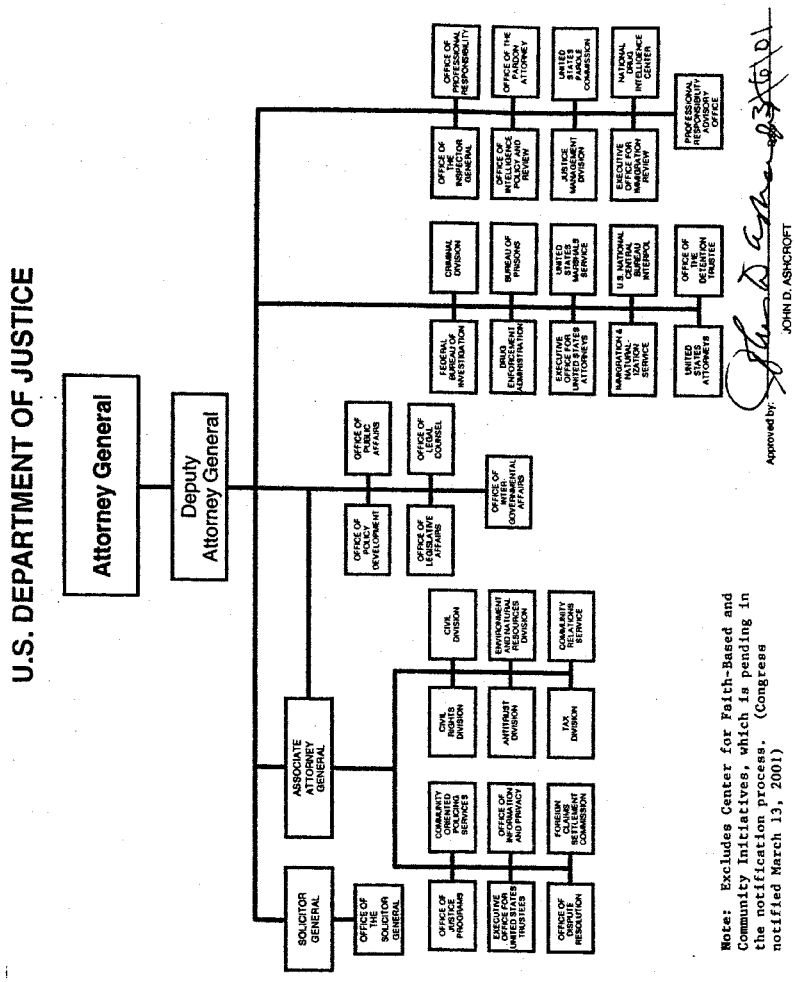
A main concentration of Mr. Beck and those charitable groups with which he is affiliated groups continues to be defeating officeholders with whom they disagree. In a Monday, March 19, 2001 message to Beck's supporters that alluded to his previous political advertising efforts, Beck urged them to call the office of Senator Brownback, the new chairman of the Senate Immigration Subcommittee, writing: "If you are so inclined, you also might want to remind the staffer that the Brownback office should look very carefully at how Sen. Abraham used his chairmanship to make him a nationwide target of labor organizations and conservatives who were incensed by his open-border policies. That opposition helped lead to his defeat."

Are federal tax officials aware that Beck is saying that his groups' advertisements helped defeat Senator Abraham and that he is issuing a direct threat against other officeholders? The message to supporters from Beck also directly alluded to press reports about Senator Brownback's interest in running for the Governor of Kansas: "Brownback is said to be wanting to run for Kansas governor in two years. Will his staff think becoming a national controversy is a good way to emerge among Republican competitors for the party nomination?" Not coincidentally, earlier this year ads about immigration from Mexico ran heavily in Kansas and were funded by FAIR and Roy Beck's Coalition for the Future American Worker.

The web site of Beck's Americans for Better Immigration features a page devoted to "Involuntarily Retired Past Champions of High Immigration and U.S. Population Growth," shows a picture of Senator Abraham, and boasts, "Voted out: Nov. 7, 2000." To say the least, this is an odd statement on a web page of a group that purports it has no involvement in electoral politics.

Given the past statement of John Tanton that the new overriding goal of anti-immigrant activists is to defeat their opponents in elections, the Internal Revenue Service should view advertisements by FAIR and Roy Beck's groups that mention a particular elected official as efforts to influence that candidate's election or electoral prospects. In the future, I will instruct my staff to forward any and all such advertisements to the IRS for review.

I believe it is past due for the IRS to investigate FAIR, the Coalition for the Future American Worker, Americans for Better Immigration, NumbersUSA.com, U.S., inc, and other interrelated groups that have clearly abused their non-profit tax status by violating numerous tax laws and prohibitions related to involvement in political and campaign activities. These groups are mocking the IRS and our tax laws. It's time for them to stop laughing.



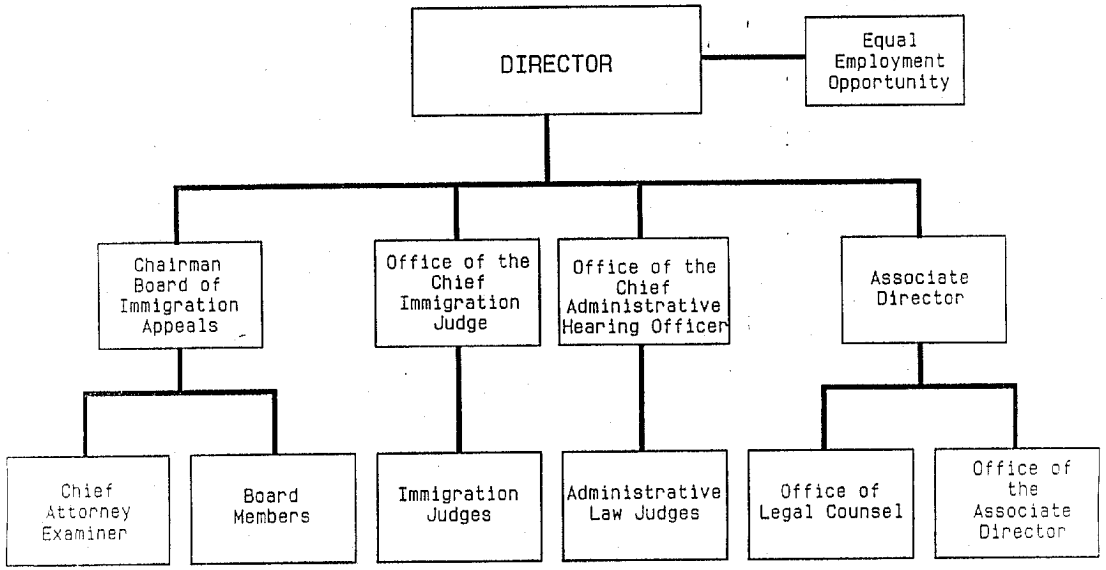
Approved by:

JOHN D. ASHCROFT
Attorney General

Note: Excludes Center for Faith-Based and Community Initiatives, which is pending in the notification process. (Congress notified March 13, 2001)

1

EXECUTIVE OFFICE FOR IMMIGRATION REVIEW



Approved: _____ Date: 05/17/95

JANET RENO
Attorney General

Congressman Chris Cannon
Questions for the Record
House Judiciary Subcommittee on Immigration
"Oversight Hearing on the INS and the Executive Office for Immigration Review"
May 15, 2001

Questions for the Record for "Numbers USA" Witness - Mr. Roy Beck

In the year 2000, or in the past or presently, did you personally - or do you – receive any remuneration from Dr. John Tanton or any organization that he controls or with which he is on the board of or is affiliated with? If so, please describe this.

Did Dr. Tanton, any member of FAIR, or any member of the Coalition for the Future American Worker or Americans for Better Immigration discuss their interest with you in seeing Senator Abraham defeated for reelection?

Did Dr. Tanton contribute financially in any way to run the advertisements for Coalition for the Future American Worker or Americans for Better Immigration, or to NumbersUSA.com? If so, can you please describe this.

Have you received any financial contributions to the Coalition for the Future American Worker or Americans for Better Immigration, or to NumbersUSA.com from Stephen Mumford, Sarah Epstein, or Donald Collins? If so, can you please describe these.

Are you aware of Stephen Mumford's efforts to sterilize women in the Third World? Do you support those efforts?

What is your opinion of the one-child per family policy that has operated in China for the past number of years?

What is your opinion of the book Camp of the Saints, which is published by the Social Contract Press? Do you believe the book is in any way racist in its depictions or message regarding dark-skinned immigrants or refugees?

Where are the offices located for Americans for Better Immigration and the Coalition for the Future American Worker respectively and what is the tax status of each organization?

Where do you operate NumbersUSA.com?

Do you run all three organizations?

Do you have any paid staff on any of these organizations? If so, please describe how many and from what funds they are paid.

What percentage of your NumbersUSA.com activities is devoted to information or actions (such as sending faxes to Congress) that involve lobbying Congress on immigration issues?

Would you personally like to see members of Congress that do not hold your views on immigration defeated for re-election?

Under IRS rules, non-profit groups are not allowed to engage in political activities, particularly those affecting federal elections, is that your understanding?

Can you describe your involvement with Michigan Immigration PAC?

Did Americans for Better Immigration and the Coalition for the Future American Worker receive any financial contributions from individuals who contributed to or were involved with Michigan Immigration PAC? If so, who made such contributions, what were there amounts, and how did such contributions come about?

According to FEC records, Michigan Immigration PAC spent only $25,000 in trying to defeat Senator Abraham, while non-profit anti-immigration groups spent approximately $2 million on advertisements that specifically mentioned Senator Abraham by name and were designed to damage his reelection efforts. Isn't the reason for this disparity that a conscious decision was made by you, Dr. Tanton, and those associated with FAIR that the rules that governing political action committees are too constraining and do not provide the tax advantages of organizations with the tax status of 501(c)(3) or other non-profit status?

Would you have anything to fear from the Internal Revenue Service examining the records of your numerous organizations, including their links to other anti-immigration organizations, particularly focusing on your efforts during the year 2000 in Michigan?

To clear the air on this issue, would you invite the IRS to come in and look at the books of your various organizations and how they connect with other anti-immigration organizations?

Questions for INS Witness - Mr. Kevin Rooney

1. **Processing times.** In the American Competitiveness in the Twenty First Century Act, INS was advised of the sense of the Congress that processing of petitions and applications should be brought within the timeframe of 180 days (with the exception of certain nonimmigrant petitions that should be adjudicated within 30 days). Since the passage of that legislation, many backlogs have only increased. At several points over the past six months, processing of H-1B petitions has taken over three months. At the Texas Service Center, processing of immigrant petitions for immediate relatives of U.S. citizens is taking nearly a year, and the filing date of these petitions being processed has advanced only 21 days since the first of the year, and only a little more than 2 months since passage of the October Act. The Vermont Service Center does not appear to have processed a single preference petition for families of permanent residents since the Act's passage: the filing date for these petitions being processed was January 12, 1999 in October, and is still January 12, 1999 today. Yet, during this time, new visa numbers have become available in these categories. So, the problem is not that it is futile to process family-based immigrant petitions: many of the beneficiaries would be eligible to proceed with their permanent residence if only INS could process their petitions.

    a. Why is INS paying so little regard in its processing priorities to the unification of families, forcing U.S. citizens, who are often members of the military, to wait more than a year to bring their spouses to the U.S.? How can you justify completely ignoring for six months the requests of permanent residents to have their spouses and children join them in the U.S.?

    b. I realize that INS must set priorities in applying its limited resources for adjudications, but why are those priorities applied by almost completely ignoring some classes of applicants in favor of others? It is not unusual to see a Service Center catch up on, for example, employment-based immigrant petitions by completely ignoring family-based petitions. Shouldn't resources be applied more equitably across the board?

    c. If INS resources are scarce, why are they being squandered through pointless fishing expeditions? Members of Congress are receiving reports of large numbers of information requests being sent by INS containing laundry lists of demanded information with no apparent purpose, requests that are unrelated to the standards for qualifying for the visa, or requests on extensions of status and other situations with unchanged facts where decisions already made are being readjudicated. Why are supposedly scarce resources being spent in this manner, and what is being done to stop these practices?

e. If you include H-1Bs in premium processing, how will you satisfy your mandate to count H-1B usage for quota purposes in the order in which the petition was filed? Do you have a mechanism in place to assign H-1B numbers when the petition is filed, as opposed to when it is decided?

f. Speaking of premium processing, how is that program being staffed? Have new personnel been hired to staff it? How many positions have been created for it, and how many are filled at this time? Are experienced INS personnel staffing it? If so, how are the positions they've abandoned being filled? How many openings remain among positions abandoned by experienced personnel to fill premium processing slots? If so many experienced people have been removed from regular processing, how do you propose to maintain speed and quality of processing in the regular processing areas?

2. **Impact of delays on families.** Apart from the pain of keeping families separated by bureaucratic delays, the INS' slowness is having a profound impact on their ability to maintain their rights altogether. There have been far too many instances of individuals with family relationships that should enable them to stay in the U.S. being removed because the INS refuses to expedite processing of the immigrant petition so that an immigration judge can then rule on the person's adjustment of status. In other words, the individual would not be removed or deported if only INS could have adjudicated the family-based immigrant petition in a reasonable amount of time. But there is a further outrage here. Not only is INS incapable of a reasonable adjudication time, but it flatly refuses to compensate for its slowness by expediting the petitions for these families. Yes, it takes a little extra work to pull one of these cases out of the pile and process it first, but the impact of that extra work on people's lives is profound. Remember, these are people who are eligible for relief from deportation, if only INS could fulfill its mandate of a reasonable adjudication time. Will INS implement a policy of expediting family-based petitions where the beneficiary is under proceedings?

3. **Profiling.** Constituents have noted a disturbing trend of certain types of nationalities, petitioners or beneficiaries being targeted for close scrutiny, and resulting delays in processing, in adjudications. Specific reports have included:

   a. Canadian citizens of Indian or Chinese origins applying for NAFTA benefits at ports of entry being referred for closer questioning or denied altogether at higher rates than those of European origins.
   b. Employment-based petitions filed at Service Centers, where the representative signing on behalf of the employer has an Asian name, being subjected to extensive requests for evidence and requirements for proof of financial viability not applied to other companies.
   c. Employment-based petitions with Chinese or Russian beneficiaries being subjected to higher scrutiny.

Does INS have any nationality or national origin-specific criteria for triggering further investigations? Are there any policies AGAINST application of such criteria? If so, how are they communicated to individual officers? Are adjudications monitored for trends that would seem to indicate the application of profiling? How is that monitoring performed, and what have been the statistical results? Will INS put such monitoring into place?

4. **Use of 245(i) as investigatory tool.** INS is to be congratulated for taking the initiative and issuing field guidance telling its officers not to use applications or petitions filed under section 245(i) to initiate proceedings against beneficiaries of those applications. However, I am concerned that the guidance is too limited. Section 245(i) was intended as a means for people otherwise eligible for permanent residence to adjust their status without having to leave the country. It was not intended as a general amnesty. Unfortunately, it has been mis-interpreted in some press reports, and some unscrupulous consultants have made a lot of money by preparing applications for people, whether they are eligible or not. I would hate to see at atmosphere of mis-trust engendered if, when the applications for people who are not eligible for 245(i) are denied, those people are placed in removal proceedings as a result. Will INS expand the field guidance to include a prohibition against the use of 245(i) information to place people in removal proceedings when the application is denied? Also, the guidance was limited to petitions or applications filed on or after the date the guidance memo was issued, which was only April 27, the last business day before the 245(i) deadline. By not including applications filed before that date in the guidance's protection, aren't you rewarding those who waited until the last minute to file, while leaving vulnerable people who filed early in the program and are at least equally deserving of protection against a violation of trust?

Additional Questions for INS Witness

5. Asylee adjustment:

The statute allows 10,000 asylees to adjust their status to lawful permanent residents each year. There are over 57,000 asylees currently waiting to become permanent residents. By regulation, INS must maintain a waiting list of these asylees and adjust their status on a first-come, first-serve basis. However, the asylee adjustment process has been shrouded in mystery because INS refuses to explain how it maintains the list. It has also has not released any kind of public notice informing the asylees when it reaches the 10,000 limit each year and what the cut-off date is.

Which INS office is responsible for maintaining the waiting list?

How is the cut-off date for the waiting list determined?

How quickly are the visas used each year?

Why is this information, particularly the cut-off date, not released to the public?

6. **Counting of H-1Bs.** After its abysmal failure in the 1999 H-1B count, INS spent substantial sums of money on an audit of its counting methods. In order to clear the slate, Congress in the American Competitiveness in the Twenty First Century Act essentially "forgave" past mis-counts, so that INS could be free to resolve its problems in this regard on a going-forward basis. What steps have been taken to correct the problems in earlier mis-counts? What resources are needed to ensure that past errors are not repeated? Were those resources included in the Service's budget request this year? If not, why not?

7. **Implementation of legislation.** At the end of the last Congress, several pieces of legislation were enacted to address various immigration issues or to compensate for delays and failures in INS' processing systems. To date, not only have there been no regulations implementing any but the smallest segments of these laws, there has not been any significant field guidance issued. As a result, INS field offices have not yet begun to implement legislation, some of which was enacted more than six months ago and had immediate effect. In the meantime, people eligible for the benefits of this legislation have seen their applications kept "on hold," sometimes resulting in children "aging out" from benefits or beneficiaries who need to travel having to delay much-needed trips or take the trips and then be unable to gain re-entry. Also, because INS has threatened to take positions that are much more restrictive than the language of the American Competitiveness in the Twenty First Century Act, many who are eligible for that Act's portability provisions have been afraid to take advantage of the provisions. INS made clear during the consideration of that Act its dislike of some of its provisions. However, the provisions were enacted, and it is up to INS to implement them and implement them as written.

    a. What has been the hold-up in issuing regulations, or even guidance, under the American Competitiveness in the Twenty First Century Act?

    b. Why, when the language of the American Competitiveness in the Twenty First Century Act with respect to H-1B portability is so clear, has INS been indicating an intention to refuse the benefits of that section when the H-1B worker has been the subject of a lay-off, or has changed to another status while awaiting the next job offer?

    c. Why, when its sister agency, the State Department, has been able to issue regulations and begin processing of V and K visas under the LIFE legislation, has INS been so slow to do so?

8. **Implementation of the Nursing Relief for Disadvantaged Areas Act of 1999.** After a wait of nearly a year, the INS finally implemented the portion of the Nursing Relief Act that outlined the standards and procedures for national interest waivers for physicians serving medically underserved areas by means of an Interim Final Regulation that significantly re-wrote the standards in that detailed legislation. Much to our surprise, legislation that was supposed to apply to all physicians in underserved areas was limited by regulation to primary care physicians, relying on a definition used by HHS for statistical purposes only. What is

INS' justification for denying to medically underserved areas the services of physicians in key specialties? And the regulations are rampant with other problems and restrictions, including (but not limited to): restricting the "grandfathered" cases that qualify for the three-year service obligation to applications filed between November 1, 1998 and November 12, 1999, refusing to accept public need statements from county or local health departments, requiring a personal attestation of the physician's credentials from a Federal agency recommending a public interest statement, and requiring an extra round of filings that essentially doubles the expense of filing and creates duplicate work for the Service, which already has shown that it cannot absorb the work it already has.

9. **Treatment of foreign nationals arriving at borders and airports.** We have all read of the previous situation in Portland, and of other incidents at other ports, of arriving aliens being treated rudely, or even abusively, by INS officers at the ports of entry. The INS officer is often a foreign national's first view of the United States, and it is completely unacceptable that that first view be one of nastiness. To make matters worse, many of the reports of incidents include information that would indicate that people are being targeted for extra attention and even abuse based on their race. It is possible for officers to do their jobs without being abusive and without use of racial profiling. What steps have been taking, in terms of training and monitoring, to eliminate this kind of treatment of people trying to enter this country?

10. **Adjudications under NAFTA.** The frequency and volume of complaints from companies trying to utilize Canadian personnel under NAFTA has grown considerably in the last year. Inspectors who clearly have no idea what they are doing, inspectors who seem to be making up the standards as they go along, and inspectors who seem bent on refusing entry no matter what the merits of the application are, seem to be a growing trend. People are being told that they are "just trying to bypass the H-1B system," ignoring, of course, the fact that the qualifications for TN and H-1B overlap significantly. The frequency with which previously-approved NAFTA approvals are revoked is growing, even when there has been no change in facts. This is interfering with travel and commerce between Canada and the United States, since no employee or employer can be certain that one inspector's adjudication will stand upon the next entry to the U.S. What steps is INS taking to ensure that NAFTA adjudications are reasonable and consistent, and that one officer cannot reverse the actions of another officer in the absence of fraud or misrepresentation?

11. **Treatment of venture capital financing.** There have been growing reports of employment-based permanent residence petitions being denied in California where the company is relying on venture capital rather than income to meet its wage obligations. In fact, some of the denials seem to imply that companies must rely on profits to meet their wage obligations, demonstrating a complete ignorance of how corporate finance works. In light of this demonstrated lack of understanding of finance, and in light of the importance—even in the current economic climate—of venture capital to the growth of new industries, how does INS justify denying visas to people whose employers have the money to pay them? After all, venture capital is becoming harder to secure, so that the fact that a company has been able to secure such financing could be seen as a strong endorsement of a company's strength.

Also, one would think that INS, more than any other agency, would be aware of the important role that foreign nationals have played over the last decade in fueling economic growth. How can the Service thereby deny companies access to this fuel based on such specious grounds?

Questions for INS/EOIR Witness - Ms. Peggy Philbin

1. **Notice to appear/Change of address, counsel:**

   There seems to be a substantial gap in time between when the Notice to Appear (NTA) is issued by the INS to the time that the NTA is filed with the Immigration Courts - in some cases, as much as a year. Because the INS and the EOIR maintains two separate record systems, the respondents have no way to report changes in counsel, address, etc. from the time that the INS issues an NTA to the time that the NTA is actually filed with the Immigration Courts. INS will not accept the change of address or counsel after the NTA has been issued, but the EOIR will not accept the change of address or counsel until the NTA has been filed with the court. In the meantime, people are being ordered removed in absentia because their hearing notices are being sent to old addresses or former counsels. Also, jurisdiction for NACARA and similar relief has been divided between the immigration courts, for those who are under removal proceedings, and the INS Service Centers, for those who are not. But the slowness in filing NTAs has created a kind of limbo in which persons eligible for relief are not allowed to file anywhere. When this happens, the Service Centers refuse to accept the cases because of the issuance of the NTA, but the courts cannot hear the claim because the NTA was never filed.

   Why does INS take so long to file an NTA after it has been issued?

   Please explain why INS and EOIR cannot have a single system which would provide both agencies with the most up-to-date information about the respondents their counsel.

   What provision will INS and EOIR make to ensure that persons eligible for NACARA and similar relief have a venue in which to apply?

Additional Questions for EOIR

1. **Ordering removal where an immigrant petition is pending.** Like it or not, EOIR must cope with the impact of INS' slow processing. Nowhere is this more profound than for individuals in removal proceedings who have immigrant petitions pending at INS and are eligible for relief, except that INS has not gotten to their petitions. Immigration judges should not be ordering removal for people in this situation, yet it happens with depressing frequency. What steps has EOIR taken to instruct its judges to continue cases until the petition is adjudicated by INS, and to work with INS to find a means to resolve this problem?

2. **Video hearing:**

It is my understanding that Immigration Courts are conducting removal hearings, including evidentiary hearings on claims for asylum, by video conferencing rather than in person. While the use of video conferencing in removal hearings is permitted by the statute, I believe it has been used in a manner that violates people's right to a full and fair hearing.

- How many Immigration Courts have video conferencing capacity?
- How many Immigration Courts are actually using video conferencing in removal hearings?
- Under what circumstances are video conferencing used in removal hearings? For example, are they used in master hearings, evidentiary hearings on the merits? In what type of cases (ex. asylum, cancellation of removal)?
- How is the quality of the video conferencing transmission?
- How do respondents communicate with their attorneys or representatives during video hearings? What efforts has the EOIR made to ensure that the respondents can communicate privately with their attorneys immediately before, during and after the hearing?
- Is EOIR monitoring which cases are being adjudicated through video conferencing and which cases are being decided in person?
- Does EOIR know whether reliefs such as asylum are being granted or denied at similar rates in video hearings as they are in in-person hearings?

3. Variation in Asylum Approval Rates

A recent series of articles in The Los Angeles Times highlighted some disturbing problems with the Immigration Courts' adjudication of asylum claims. One particularly chilling aspect was the low percentage of asylum grants by some Immigration Judges. For example, Immigration Judge William F. Jankun of New York only granted 28 out of 2,050, or 1.4%, of the asylum cases that he heard. In contrast, two other Immigration Judges in New York granted over 40% of the asylum cases they heard. What accounts for such a variation in asylum approval rates in the same city?

Questions for INS Witness - Mr. Rooney and INS/EOIR Witness - Ms. Peggy Philbin

1. Are you familiar with the proposals of Lutheran Immigration and Refugee Service for live legal orientation presentations for immigration detainees and for alternatives to detention for asylum seekers and others in immigration detention? If so, can you give us an evaluation of the soundness of these proposals?

2(a). Live legal orientation presentations by nongovernmental organizations for immigration detainees have been pilot tested in three sites. Can you comment on the benefits or detriments to such programs? Did they help to achieve faster resolution of cases, to improve security through reduced tension and/or save the government money?

2(b). The INS has also experimented with alternatives to detention for asylum seekers and others through contracts with nongovernmental organizations such as Catholic Charities in New Orleans, Lutheran Immigration and Refugee Service in Ullin, IL and Vera Institute in New York. Can you comment on the effectiveness of such programs? How high were their participants' appearance rates in immigration court? Did the alternatives facilitate access to counsel or otherwise improve proceedings or resolution of cases? How did their costs compare with detention?

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26 June 01

Rep. George W. Gekas
Chairman, Subcommittee on Immigration and Claims
Attn: Emily Sanders
B-370B Rayburn House Office Building
Washington, DC 20515

Dear Chairman Gekas,

Thank you for inviting me to your May 15 hearing to give voice to the many Americans who live in communities that feel they are beyond the rule of law because the INS will not enforce federal laws against the hiring and harboring of illegal aliens. This is an increasingly serious problem that has developed over the last fifteen years – and especially in the last eight years as the Administration systematically eliminated Interior Enforcement programs. Literally millions of Americans are looking to your leadership in oversight to return law and order to American communities overrun by illegal foreign migration.

Please do not hesitate to call on NumbersUSA.com if we can be of any assistance in your efforts.

I am in receipt of questions posed in writing by Rep. Chris Cannon. Although the questions do not relate to the subject of my testimony or of the May 15 hearing, I am happy to relieve Rep. Cannon of any concerns he may have in terms of the operation of NumbersUSA.com as a non-profit organization under the provisions assigned to 501(c)3 groups.

The following appear to be the groupings of questions from Rep. Cannon:
(1) Status of NumbersUSA.com
NumbersUSA.com currently operates under the 501(c)3 rules of the IRS as a project under the umbrella of US Inc., which is a 501(c)3 organization. As such, it is pleased to comply with various IRS rules restricting and regulating lobbying, funding, and election participation. This compliance is assured and monitored through annual certified audits and reports to the IRS. I am the executive director of NumbersUSA.com.

(2) Donors to NumbersUSA.com
Donors to NumbersUSA.com exercise their rights of citizen speech through contributions under privacy guidelines issued by the IRS.

(3) NumbersUSA.com's Relationship to H-1B Issue Advertising in
NumbersUSA.com did not participate in any advertising in 2000 that referenced H-1B visas or Senator Spencer Abraham. (However, Mr. Chairman, NumbersUSA.com was otherwise supportive of the many attempts that this Subcommittee made to protect American workers and students from being harmed by the H-1B program. Had the Republican and Democratic Party leadership in the House and Senate followed this Subcommittee's lead, there would not now be such an oversupply of tech workers nor the spectacle of so many imported foreign workers wandering around after being laid off.)

(4) Purpose of NumbersUSA.com
I invite all Members of the Subcommittee to peruse our website (www.NumbersUSA.com) to view the goals and objectives of our organization. Primarily, we seek to educate about the need to enact unfinished recommendations of the bipartisan national Commission on Immigration Reform chaired by former Rep. Barbara Jordan and of the President's Council on Sustainable Development chaired by former Sen. Tim Wirth. Carrying out those proposals on immigration will be consistent with our principles of a more economically just and environmentally sustainable society that protects the ability of Americans to live in communities with a high degree of individual liberty and an uncongested quality of life. We will be pleased to meet with and assist all Members of the Subcommittee on these issues, as we have since our founding in 1997. NumbersUSA.com pursues these goals and objectives under the parameters established by its IRS tax status.

(5) Status of Americans for Better Immigration
ABI is an independent Virginia corporation that operates under the 501(c)4 rules of the IRS. As such, ABI is pleased to comply with those rules and participate in the wider range of activities allowed this type of organization. I am the president of ABI.

(6) Participation of ABI in the H-1B Issue Advertising of 2000
ABI was an enthusiastic member of the Coalition of the Future American Worker that ran considerable issue advertising in 2000 to oppose the legislation that eventually greatly increased the number of H-1B visas. From the vantage of mid-year 2001, we can see how clearly wrong it was for certain industry lobbyists to pressure Congress to increase the importation of foreign tech workers at a time when the GAO reported it could find no evidence of a serious shortage of American workers for tech jobs and at a time when industry would soon be making massive layoffs of tech workers.

(7) Status of the Coalition for the Future American Worker
The Coalition, as its name implies, is a coalition of many organizations that voluntarily have worked together on an event-by-event basis to oppose specific efforts to use immigration to depress American wages and working conditions. The Coalition has no tax status.

(8) My Relationship to the Coalition for the Future American Worker
I do not run the Coalition, nor do I hold any office with the Coalition. ABI is one of many members of the Coalition.

(9) My Relationship to MICHIMPAC
MICHIMPAC is a Political Action Committee. My relationship to it was that as a private citizen I signed one of MICHIMPAC's fund-raising letters. This was done without consultation with NumbersUSA.com, ABI, FAIR, or Dr. Tanton.

(10) MICHIMPAC's Funding
Questions about MICHIMPAC's funding should be directed to MICHIMPAC's leaders.

(11) The Michigan Election in 2000 Involving Sen. Spencer Abraham
Neither ABI, NumbersUSA.com, nor the Coalition for the Future American Worker had any involvement in the Michigan senatorial election.

(12) "Anti-Immigration" Organizations
The term "anti-immigration" is used in these questions in reference to NumbersUSA.com and ABI. I'm pleased to have the opportunity to make it clear to the Members of the Subcommittee that neither NumbersUSA.com nor ABI is anti-immigration. Both are decidedly pro-immigration organizations, supporting a continuation of the very high historical average level of immigration during the nation's first two centuries.

(13) Issues Outside the Scope of NumbersUSA.com and ABI
Several other questions were asked concerning opinions about issues that simply are not dealt with by either NumbersUSA.com or ABI: nor have I as an independent author dealt with these issues.

Mr. Chairman, let me reiterate the willingness of NumbersUSA.com to meet with all Members of the Subcommittee in assistance on the crucial immigration issues before them.

Sincerely,

Roy Beck

Roy Beck

Dictated by phone and signed in Mr. Beck's absence
by Edwin Childress, Deputy Director
NumbersUSA.com

U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

June 29, 2001

The Honorable George W. Gekas
Chairman
Subcommittee on Immigration and Claims
Committee on the Judiciary
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

Enclosed please find responses and related materials to questions Congressman Cannon posed to Mr. Kevin Rooney, Acting Commissioner of the Immigration and Naturalization Service, following the Subcommittee's hearing of May 15, 2001, regarding oversight of the Service. Please let us know if we may be of additional assistance in connection with this or any other matter.

Sincerely,

Daniel J. Bryant
Assistant Attorney General

Enclosure

cc: The Honorable Sheila Jackson Lee
Ranking Minority Member

The Honorable Chris Cannon

Responses to Questions from Rep. Cannon
to Acting INS Commissioner Kevin Rooney

INS Oversight Hearing
Immigration Subcommittee
May 15, 2001

1. Processing times----

Why is INS paying so little regard in its processing priorities to the unification of families, forcing U.S. citizens, who are often members of the military, to wait more than a year to bring their spouses to the U.S.? How can you justify completely ignoring for six months the requests of permanent residents to have their spouses and children join them in the U.S.?

As you know, serious backlogs of immigration benefit applications pending with INS began to build during the 1990's. With the support of Congress, the INS launched efforts to reduce the backlogs of certain immigration benefit applications in fiscal year (FY) 1999. In FY 1999, Congress appropriated $176 million to INS to reduce the backlog of naturalization benefit applications. With this support, INS dramatically increased productivity and completed 1.2 million naturalization benefit applications– reducing the pending volume of applications from approximately 1.8 million to less than 1.4 million. In FY 2000, Congress appropriated $124 million to reduce backlogs. Based on the successful efforts of the previous year, INS expanded its backlog reduction effort to include both naturalization and adjustment of status benefit applications. With this support, INS completed 1.3 million naturalization benefit applications and 584,000 adjustment of status benefit applications. This effort reduced the pending volume of naturalization benefit applications to approximately 800,000 – the lowest level since November 1996. The INS is continuing its backlog reduction efforts in FY 2001, including the planned completion of 800,000 naturalization benefit applications, 800,000 adjustment of status benefit applications, and approximately 90,000 other citizenship benefit applications.

Unification of families has been and continues to be a priority for INS during these backlog reduction efforts. The early focus on naturalization and adjustment of status applications benefits both family and employment-based immigrants. We agree that INS backlogs should be reduced. The goal of the Administration's five-year, $500 million initiative is to attain a six-month processing time for all applications and petitions. The INS is currently working on a plan to eliminate backlogs of all

immigration benefit applications -- including family-based immigrant petitions -- over the next few years.

I realize that INS must set priorities in applying its limited resources for adjudications, but why are those priorities applied by almost completely ignoring some classes of applicants in favor of others? It is not unusual to see a Service Center catch up on, for example, employment-based immigrant petitions by completely ignoring family-based petitions. Shouldn't resources be applied more equitably across the board?

The INS does its best to apply its limited resources equitably. On occasion, INS must devote extra resources to a particular benefit program in order to meet a processing time goal. However, INS does not completely ignore any benefit programs. In addition, expedited procedures remain available to address emergency situations when there is a temporary slow down in a particular benefit program.

If INS resources are scarce, why are they being squandered through pointless fishing expeditions? Members of Congress are receiving reports of large numbers of information requests being sent by INS containing laundry lists of demanded information with no apparent purpose, requests that are unrelated to the standards for qualifying for the visa, or requests on extensions of status and other situations with unchanged facts where decisions already made are being readjudicated. Why are supposedly scarce resources being spent in this manner, and what is being done to stop these practices?

It is important to INS to make judicious use of its resources, especially during this period of backlogs in many immigration benefit programs. Therefore, INS created a Production Management Division at headquarters to oversee these efforts. The Production Management Division works with Service field offices to develop specific backlog reduction goals. The Production Management Division monitors office productivity to insure efficient use of resources and to identify and eliminate processing bottlenecks.

If you include H-1Bs in premium processing, how will you satisfy your mandate to count H-1B usage for quota purposes in the order in which the petition was filed? Do you have a mechanism in place to assign H-1B numbers when the petition is filed, as opposed to when it is decided?

The INS has not yet included H-1Bs in Premium Processing Service but plans to add H-1Bs later this summer. Like petitions filed under regular procedures, petitions for

which Premium Processing Service are requested will be processed in the order of receipt. Once the annual limitation for a nonimmigrant classification is met (e.g., when the Service has received a volume of H-1B petitions sufficient to reach the annual numerical limitation), INS will temporarily terminate Premium Processing Service for all pending petitions filed for entry in that fiscal year for that classification. The INS will then process all pending petitions (regular and premium together) in the order of receipt. The INS believes that temporary termination of Premium Processing Service is the fairest method to achieve expedited processing while reasonably preserving the ability of all individuals to access numerically limited immigration programs.

The INS will announce the temporary termination by publication of a notice in the Federal Register. When the INS announces temporary termination of Premium Processing Service for a particular nonimmigrant classification, it will return the Form I-907 and Premium Fee for all requests subject to the termination.

Speaking of premium processing, how is that program being staffed? Have new personnel been hired to staff it? How many positions have been created for it, and how many are filled at this time? Are experienced INS personnel staffing it? If so, how are the positions they've abandoned being filled? How many openings remain among positions abandoned by experienced personnel to fill premium processing slots? If so many experienced people have been removed from regular processing, how do you propose to maintain speed and quality of processing in the regular processing areas?

The INS has added 141 officer and clerical positions to staff Premium Processing. The INS has already filled more than 80 percent of these positions, and nearly 50 percent of the new personnel have entered on duty.

Premium Processing Service does not create a new workload for INS. Rather, it establishes new streamlined procedures and provides additional personnel to handle existing workloads. Therefore, experienced INS personnel are staffing Premium Processing Service. It is, however, not correct to conclude that experienced personnel have been removed from regular processing. The INS believes that it will not merely maintain processing time on non-premium benefit programs but also will, over time, enable the use of additional resources to reduce processing times and eliminate backlogs.

2. Impact of delays on families---

Will INS implement a policy of expediting family-based petitions where the beneficiary is under proceedings?

Directors of INS district offices and Service Centers continue to handle expedited requests in emergency situations on a case-by-case basis. The humanitarian factors present when a family member is in removal proceedings may justify expedited processing. However, INS cannot adopt a uniform policy to expedite all such cases, because each case is judged on its unique elements.

3. Profiling---

Does INS have any nationality or national origin-specific criteria for triggering further investigations?

INS investigations (anti-smuggling, immigration fraud, worksite) are generated by leads from external sources or by information generated within INS. Any known or alleged nationality or national origin information would be descriptive and part of a specific fact pattern, rather than prescriptive or part of any triggering criteria. INS policy and training on the use of apparent race or ethnicity as a factor are being reviewed as part of the INS Investigations program evaluation and policy review process.

Are there any policies against application of such criteria?

INS investigative priorities are based upon the strength of a lead and its relationship to the agency's overall priorities for deploying resources, which include: identifying and removing criminal and terrorist aliens, deterring and dismantling alien smuggling, minimizing benefit fraud and document abuse, responding to community complaints about illegal immigration and building partnerships to solve local problems, and blocking and removing employers' access to undocumented workers. These priorities are not based upon particular nationalities or national origins in any way. With respect to decisions on whether to pursue a particular case, INS has issued guidance on prosecutorial discretion that specifically states that an individual's race, religion, sex, national origin, or political association, activities or beliefs may not be considered as relevant factors, unless they are directly relevant to an alien's status under the immigration laws or eligibility for an immigration benefit. For example, Congress has passed numerous laws basing eligibility for cancellation of removal or other benefits upon an alien's particular nationality, and INS officers should of course take

such eligibility, or lack thereof, into account when assessing the merits of a particular case. INS officers are sworn to uphold the Constitution and laws of the United States. INS policy and training conform with Federal law regarding the extent to which foreign appearance may be considered as a factor to support whether or not an INS officer has reasonable suspicion or probable cause to believe that a violation of the immigration laws of the United States has been committed, for purposes of making an arrest or taking other enforcement action.

If so, how are they communicated to individual officers?

New officer training occurs first in the academy setting, then continues with on-the-job training during the initial assignment. Policy reminders are communicated through first-line supervisors, through officer meetings and conferences, and through field memoranda. Officers also participate in training on specific topics.

Are adjudications monitored for trends that would seem to indicate the application of profiling?

Benefit casework is adjudicated on the merits under existing law, regulations and policy. The workload is processed generally in chronological order of filing. No profiling instances have been reported or observed in normal quality assurance, supervisory reviews or statistical analysis.

How is that monitoring performed, and what have been the statistical results?

As stated in the previous answer, agency quality assurance reviews and statistical production trend analysis are conducted, but no specific profiling monitoring plan exists. The INS has no information suggesting that such a monitoring plan is warranted.

Will INS put such monitoring into place?

INS is reviewing profiling issues, but currently there is no plan for specific profiling monitoring in the Adjudications area.

4. Use of 245(i) as investigatory tool---

Will INS expand the field guidance to include a prohibition against the use of 245(i) information to place people in removal proceedings when the application is denied?

Also, the guidance was limited to petitions or applications filed on or after the date the guidance memo was issued, which was only April 27, the last business day before the 245(i) deadline. By not including applications filed before that date in the guidance's protection, aren't you rewarding those who waited until the last minute to file, while leaving vulnerable people who filed early in the program and are at least equally deserving of protection against a violation of trust?

First, we should clarify the scope of the guidance to which your question refers. As the April 30, 2001, deadline approached, the INS wanted to ensure, to the extent possible, that eligible applicants would not be deterred from applying because of the possibility that their applications might be used as a basis to place them in removal proceedings. For this reason, on April 27, 2001, the INS instructed its field offices not to initiate removal proceedings against an alien who is eligible for adjustment under section 245(i), if such action would be based solely on the filing of an immigrant petition, labor certification application, or application for adjustment of status filed by, or on behalf of, that alien on or after that date. It is important that any guidance instructing INS officers not to use evidence in their possession indicating a violation of the immigration laws be narrowly tailored to achieve an important purpose. As the goal of the guidance is to encourage eligible individuals who have not filed to do so, this purpose would not be served by making it retroactive to previously filed applications.

It is also important to keep in mind that the April 30th deadline was for U.S. citizens, lawful permanent resident aliens, and employers to file immigrant visa petitions on behalf of aliens in order to make them eligible for section 245(i) adjustment at a later date. It was not a deadline for the alien beneficiary to file an adjustment application. Aliens will be able to file such applications under section 245(i) years into the future. Therefore, the implication in your question that the guidance applies only to petitions or applications filed between April 27 and 30, 2001, is not correct. It also applies to a section 245(i) adjustment application filed by an eligible alien at any time after April 27, 2001, unless and until such application is denied.

It would not be appropriate to extend the guidance to cover aliens whose section 245(i) application is denied. As indicated in your question, section 245(i) is not an amnesty provision. To issue a blanket prohibition on the use of relevant information relating to an alien who is in violation of the immigration laws, and who does not have a lawful means to adjust status through section 245(i), based upon the fact that the information came from one specific type of INS application, would not serve the

public interest and would not be consistent with the mission of the INS to administer and enforce the immigration laws of the United States properly and fairly. Rather, each case should be looked at on its specific merits. The investigations branch of INS operates under a case management system whereby cases are prioritized according to their likely impact on illegal migration and/or the local community. For example, the INS makes the removal of dangerous criminal aliens a high priority. While the case of an individual section 245(i) applicant who is unlawfully present would, without more, be unlikely to have a high priority, such cases should be considered based upon their individual facts.

5. Asylee adjustment---

Which INS office is responsible for maintaining the waiting list?

The Nebraska Service Center (NSC) is the office responsible for maintaining the waiting list of asylees who have applied for permanent residence. Until July 1998, the district offices were responsible for adjudicating asylee adjustment applications. After that time, asylees submitted their applications directly to the NSC. However, there is currently a backlog of approximately 12,000 cases pending before the districts, as well as approximately 51,000 cases waiting to be adjudicated before the NSC. Beginning in fiscal year 2002, the district cases will be consolidated at the NSC, which will be responsible for adjudicating all pending cases in chronological order.

How is the cut-off date for the waiting list determined?

The process in place is not based on a "cut-off date" per se but, rather, is based on a list of individual alien file numbers (A-Numbers) on a waiting list. The list is created based on notification from the district that a case has been adjudicated, appears approvable, and is waiting for an adjustment number. Consistent with standard "first-in/first-out" INS processing, each year the NSC authorizes for completion the first 10,000 asylee adjustments on the pending list. The INS district offices notify these applicants to complete fingerprinting and other process requirements - as necessary - before making a final decision in each case. The district offices then notify the NSC of all final decisions, which are then recorded in a central database.

How quickly are the visas used each year?

Districts process cases as quickly as possible after the annual list is released, but in many cases an asylee's eligibility for adjustment in a particular fiscal year based on his or her listing does not result in use of one of the authorized adjustment numbers.

This occurs for several reasons. There is a multiyear wait between the time an asylee is eligible to file for adjustment of status, and the time his or her application is approvable, due in part to the disparity between the number of asylum applications granted and the annual cap of 10,000 adjustments. As a result, applicants may be difficult or impossible to locate due to address or name changes. Some applicants may have obtained adjustment of status through other means, such as marriage to a U.S. citizen.

Why is this information, particularly the cut-off date, not released to the public?

The process INS currently has in place is tracked by A-Numbers, rather than by a cut-off date. Specifically, as district offices notify the NSC that a case is ready for completion, the service center enters the case into the waiting list in the sequence of its receipt by the district office. At the beginning of each fiscal year, the center then distributes the A-Numbers of the next 10,000 cases in the queue to the districts for completion during that fiscal year. Each district office receives the A-Numbers of the cases it is authorized to complete during the fiscal year. The INS has not issued a formal statement regarding this process but has frequently responded to public inquiries about it. The INS has attempted to explain the waiting list on many occasions.

6. Counting of H-1Bs---

What steps have been taken to correct the problems in earlier mis-counts? What resources are needed to ensure that past errors are not repeated? Were those resources included in the Service's budget request this year? If not, why not?

In the summer of 1999, INS discovered that there were discrepancies in the number of petitions recorded against the Fiscal Year (FY) 1999 H-1B cap, which was set at 115,000 by the American Competitiveness and Workforce Improvement Act (ACWIA). Upon further analysis, it was determined that INS may have exceeded the statutory cap for FY 1999. Therefore, early in FY 2000 INS contracted with the consulting firm of KPMG to review the counting methodology and H-1B petition process. This review was to complement preliminary agency efforts to determine the amount of the H-1B discrepancy in FY 1999, identify the systemic problems that led to this discrepancy, and recommend corrective actions.

KPMG delivered the results of its initial review in April 2000. As a result of this review, INS has adopted KPMG's methodology for counting the H-1B cap. Funding for these efforts is included in the portion of the $1000 ACWIA fee retained by INS.

7. Implementation of legislation---

What has been the hold-up in issuing regulations, or even guidance, under the American Competitiveness in the Twenty First Century Act?

During its final weeks, the 106th Congress enacted several significant legislative changes — such as the Legal Immigration Family Equity (LIFE) Act and the American Competitiveness in the Twenty-first Century Act. As such, the Immigration and Naturalization Service and the Department of Justice have had to prioritize which work to complete first.

Why, when the language of the American Competitiveness in the Twenty First Century Act with respect to H-1B portability is so clear, has INS been indicating an intention to refuse the benefits of that section when the H-1B worker has been the subject of a lay-off, or has changed to another status while awaiting the next job offer?

The INS has not yet made a final decision regarding its interpretation of this provision. The INS does, however, expect to issue guidance on this subject in the near future, as well as proposed implementing regulations.

Why, when its sister agency, the State Department, has been able to issue regulations and begin processing of V and K visas under the LIFE legislation, has INS been so slow to do so?

While proceeding as fast as possible with all necessary rulemaking in response to the LIFE Act, the INS has made those parts of the LIFE Act with relevant statutory deadlines (section 245(I), LIFE legalization, the Nicaraguan and Central American Relief Act (NACARA), and the Haitian Refugee Immigration Fairness Act (HRIFA) amendments) its highest priority for promulgating rules. The V and K programs, while providing important benefits, do not contain the same type of statutory deadlines as these other programs. In addition, it should be noted that the Service's rules implementing the V and K programs have to include a variety of provisions relating to the status of V and K aliens in the United States that were not addressed in the State Department's rules. The implementing regulations for the V and K are at the Office of Management and Budget for review.

8. Implementation of the Nursing Relief for Disadvantaged Areas Act of 1999---

What is INS' justification for denying to medically underserved areas the services of physicians in key specialties?

The Service consulted extensively with other agencies, both at the federal and state levels, prior to the implementation of this interim regulation. In addition, the preamble of the interim rule, attached for your reference, offers an accounting of our decision on the issue. INS staff are willing to meet with either you or your staff to discuss any concerns you have about this regulation.

9. Treatment of foreign nationals arriving at borders and airports---

We have all read of the previous situation in Portland, and of other incidents at other ports, of arriving aliens being treated rudely, or even abusively, by INS officers at the ports of entry. What steps have been taken, in terms of training and monitoring, to eliminate this kind of treatment of people trying to enter this country?

INS inspectors are sworn to uphold the laws and the Constitution of the United States. In performing their duties, immigration inspectors must determine the nationality of each applicant for admission and, if determined to be an alien, whether or not the alien meets the admission requirements of the Immigration and Nationality Act. Section 214(b) of the Act stipulates that every alien shall be presumed to be an immigrant until the alien establishes that he or she is entitled to a nonimmigrant status under Section 101(a)(15) of the Act. Although the burden of proof rests with an alien applicant to demonstrate that he or she is eligible to enter, pass through, or remain in the United States for any period of time, the immigration inspector must use articulable facts when determining whether an applicant is inadmissible under one of the grounds contained in Section 212(a) of the Act. An applicant's race is not a determining factor in the applicant's inadmissibility.

Immigration inspectors exercise significant and substantial authority, and the INS trains its employees to perform their duties in a responsible, courteous, and professional manner. Please be assured that the INS does not tolerate or condone discourteous or abusive behavior on the part of its employees. Allegations of abusive

or unprofessional conduct on the part of immigration inspectors should be directed to the district or regional office that has jurisdiction over the port-of-entry, so that the alleged conduct can be investigated and acted upon, where warranted.

The INS Office of Inspections has developed an integrated training approach to enhance the professionalism of the Inspections workforce. The training program was developed by the Achieve/Global Corporation under the direction and supervision of the INS Training Branch with Inspections input, and involved key field managers and employees in the development process. The training focuses on improving communication and human interaction skills and provides skills and techniques for the inspector to control difficult and sensitive situations in a professional manner.

10. Adjudications under NAFTA—

What steps is INS taking to ensure that NAFTA adjudications are reasonable and consistent, and that one officer cannot reverse the actions of another officer in the absence of fraud or misrepresentation?

The INS continues to support and enforce the need to apply the North American Free Trade Agreement (NAFTA) provisions in a reasonable and consistent manner. In January 2000, the NAFTA handbook incorporating all references, briefing material and field guidance was distributed to all ports-of-entry. Subsequent training courses in the NAFTA provisions have been provided to immigration inspectors in the field. The INS is concerned about uniformly applying the NAFTA criteria in the decision making process. We would appreciate it if you would draw our attention to any examples of which you are aware in which NAFTA criteria are not being used appropriately. These examples will assist us in identifying specific areas that require further guidance and training.

At the time of application for admission, whether initial or subsequent entries, the citizen of Canada or Mexico will be subject to inspection to determine admissibility. This is the same decision making process used on all applicants for admission, including those issued a visa by the Department of State. The NAFTA criteria for admissibility are designed to be transparent, so it is reasonable to presume admissibility at re-entry, as long as the facts have remained the same and there is no evidence of fraud or misrepresentation. However, if a subsequent inspection uncovers that the applicant is not qualified as a NAFTA professional (TN), the immigration inspector does not have the authority to admit the applicant in that status. Citizens of Canada or Mexico who do not qualify for classification as TN professionals are not

precluded from seeking classification under another existing nonimmigrant classification.

Because the NAFTA agreement was not negotiated to cover every occupation or job title at a professional level, the INS has no authority to classify aliens as a TN professionals if the occupation does not appear on Appendix 1603.D.1 of the NAFTA. The United States, Canada, and Mexico continue to work on common interpretations of terms in NAFTA Chapter 16. The objectives of the three countries in including a Temporary Entry chapter under the NAFTA are set out in Article 1: General Principals. The chapter is designed to facilitate the temporary entry among the three countries on a reciprocal basis and to establish transparent criteria and procedures for temporary entry while ensuring border security and protection of the domestic labor force and permanent employment in each country. The INS participates in the NAFTA Temporary Entry Working Group (TEWG) meetings that consist of representatives from the three countries.

Additionally, INS officers must adjudicate each NAFTA applicant based upon the definition of business activities at a professional level as prescribed in 8 CFR Sec. 214.6. The definition states: "Business activities at a professional level means those undertakings which require that, for successful completion, the individual has at least a baccalaureate degree or appropriate credentials demonstrating status as a professional in a profession set forth in Appendix 1603.D.1 of the NAFTA." At ports-of-entry, immigration inspectors are charged with ensuring the integrity of the NAFTA is upheld and its abuse prevented. The INS has a dual mission to facilitate legitimate travel and commerce, and to prevent unlawful entry at the ports-of-entry. The number of applicants admitted annually under the NAFTA continues to increase. At the same time, in an age where counterfeit educational diplomas, forged employment verification letters, and bogus corporate documents are relatively easy to obtain, the INS must apply attention to detail to prevent unlawful admissions. The number of fraudulent documents intercepted by the INS has increased 30 percent in the past four years.

11. Treatment of venture capital financing—

There have been growing reports of employment-based permanent residence petitions being denied in California where the company is relying on venture capital rather than income to meet its wage obligations. In fact, some of the denials seem to imply that companies must rely on profits to meet their wage obligations, demonstrating a complete ignorance of how corporate finance works. In light of this demonstrated lack of understanding of finance, and in

light of the importance — even in the current economic climate — of venture capital to the growth of new industries, how does INS justify denying visas to people whose employers have the money to pay them?

The INS is looking into this issue. If, as the question suggests, the practice is an isolated problem in one Service Center, INS will issue clarifying guidance.

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Rules and Regulations

Federal Register

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 204 and 245

[INS No. 2048-00]
RIN 1115-AF75

National Interest Waivers for Second Preference Employment-Based Immigrant Physicians Serving in Medically Underserved Areas or at Department of Veterans Affairs Facilities

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule amends the Immigration and Naturalization Service (Service) regulations by establishing the procedure under which a physician who is willing to practice full-time in an area designated by the Secretary of Health and Human Services as having a shortage of health care professionals or in a facility operated by the Department of Veterans Affairs may obtain a waiver of the job offer requirement that applies to alien beneficiaries of second preference employment-based immigrant visa petitions. This rule explains the requirements the alien physician must meet in order to obtain approval of an immigrant visa petition and, once the physician has completed the requirements, to obtain adjustment to lawful permanent residence status. This regulatory change is necessary to help reduce the shortage of

physicians in designated underserved areas of the United States.

Effective date: This interim rule is effective October 6, 2000.
Comment date: Written comments must be submitted on or before November 6, 2000.

ADDRESSES: Written comments must be submitted, in triplicate, to the Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street, NW, Room 5307, Washington, DC, 20536. To ensure proper handling, please reference the INS number 2048-00 on your correspondence. Comments are available for public inspection at this location by calling (202) 514-3048 to arrange for an appointment.

FOR FURTHER INFORMATION CONTACT: Craig Howie, Headquarters Adjudications Officer, Business and Trade Services, Adjudications Division, Immigration and Naturalization Service, 425 I Street, NW., Room 3040, Washington, DC 20536, telephone (202) 353-8177.

SUPPLEMENTARY INFORMATION:

Background

What Are National Interest Waivers?

Section 203 of the Immigration and Nationality Act (the Act) provides for the allocation of preference visas for both family and employment-based immigrants. The second preference employment-based category (EB-2) allows for the immigration of aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. See section 203(b)(2) of the Act. The Act at section 203(b)(2)(B) also allows the Attorney General to waive the job offer requirement placed on EB-2 immigrants when the Attorney General determines that services the alien intends to provide will be in the national interest. Such waivers are commonly called national interest waivers. These waivers relieve the petitioner from fulfilling the labor certification requirement, as administered by the Department of Labor.

Legislative Authority

How Has Congress Amended Section 203 of the Act?

On November 12, 1999, the President approved enactment of the Nursing Relief for Disadvantaged Areas Act of 1999, Public Law 106-95 (Nursing Relief Act). Section 5 of the Nursing Relief Act amends section 203(b)(2) of the Act by adding a new subparagraph (B)(ii). The amendment establishes special rules for requests for a national interest waiver that are filed by or on behalf of physicians who are willing to work in an area or areas of the United States designated by the Secretary of Health and Human Services (HHS) as having a shortage of health care professionals or at facilities operated by the Department of Veterans Affairs (VA). The amendment is applicable only to practicing licensed physicians (namely doctors of medicine and doctors of osteopathy), not other health care professionals such as nurses, physical therapists, or doctor's assistants.
Note that the Consolidated Appropriations Act, 2000, Public Law

106-113, 113 Stat. 1501, enacted on November 29, 1999, also included an essentially identical amendment to section 203(b)(2)(B) of the Act. (See Section 1000(a)(1) of Division B of Pub. L. 106-113, 113 Stat. at 1535, which enacts the Department of Justice Appropriations Act, 2000.) To make the benefit of new section 203(b)(2)(B)(ii) as widely available as possible, and to avoid confusion for any physician on whose behalf a petition was filed between November 12 and November 29, 1999, the interim rule fixes November 12, 1999, as the proper effective date.

Under the Act as amended, the Attorney General is directed to grant a national interest waiver of the job offer requirement to any alien physician who agrees to work full-time in a clinical practice for the period fixed by statute. For most cases, the required period of service is 5 years; 3 years' service is sufficient in those cases involving immigrant visa petitions filed before November 1, 1998. The alien physician must provide the service either in an area or areas designated by the HHS as having a shortage of health care professionals (namely in HHS designated Medically Underserved Areas, Primary Medical Health Professional Shortage Areas, or Mental Health Professional Shortage Areas), or at a VA facility or facilities. In either case, the alien physician must also obtain a determination from HHS, VA, another federal agency that has knowledge of the physician's qualifications, or a State department of public health that the physician's work in such an area, areas, or facility is in the public interest.

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Why Is the Service Issuing This Regulation?

This interim rule is necessary to codify the provisions of Public Law 106-95 and to put into place procedures for both the public and Service officers to follow.

Are the New Statutory Provisions Available to Any Physician?

Section 203(b)(2)(B)(ii) of the Act states that any physician may petition for a national interest waiver. While the statutory language says "any physician," the Service notes that HHS currently limits physicians in designated shortage areas to the practice of family or general medicine, pediatrics, general internal medicine, obstetrics/gynecology, and psychiatry. Unless HHS establishes shortage areas for other fields of medicine, only these fields of medicine are covered by this rule.

The Service anticipates that the majority of physicians petitioning under the new provisions will be those that are already admitted to the United States in a valid nonimmigrant status. The Service expects that many J-1 nonimmigrant medical doctors in training, as well as physicians practicing medicine in H-1B nonimmigrant status, will apply for this waiver since many J-1 and H-1B physicians practice or are in training to practice family or general medicine. It is unlikely that many physicians living abroad will have completed the necessary licensing and certification procedures in order to qualify for this particular EB-2 immigrant visa. Any physician living abroad who has met the requirements necessary to practice in the United States, however, may seek a national interest waiver of the job offer requirement, if the physician can meet the requirements of section 203(b)(2)(B)(ii).

How Much Time Will the Service Give an Alien Physician To Complete His or Her Aggregate Service?

The interim rule establishes that physicians petitioning for EB-2 immigrant status with a request for a national interest waiver must fulfill the aggregate 5 years of full-time service within a 6-year period following approval of the petition and waiver (within 4 years of approval of the petition and waiver for cases filed before November 1, 1998). The Service is of the opinion that granting physicians one additional year to accumulate the needed aggregate time is more than reasonable.

The Service realizes that situations will arise that cause some physicians to have interruptions in the respective medical practice, such as job loss through no fault of their own and the ensuing search for new employment in an underserved area, pregnancy, or providing care to ill parents, children, or other family members. Nevertheless, the Service does not consider it appropriate to allow physicians to remain in the United States indefinitely without satisfying the service requirement. The Service will, therefore, deny the application for adjustment of status and revoke approval of the visa petition and national interest waiver in any case in which the alien physician fails to submit, within the time fixed by the interim rule, the required documentary evidence establishing the physician's compliance with the service requirement.

Does Time Spent by the Alien Physician in J-1 Status Count Toward the Mandatory Service Time Period?

No. The Act plainly states that any time spent by the alien physician in J-1 nonimmigrant status does not count toward either the 5 or 3-year medical service requirement.

What Evidence Will Physicians Need To Submit?

This interim rule establishes what documentary evidence is necessary for physicians desiring to take advantage of the statutory amendment. However, most of this documentation is similar to what a physician would be required to submit if he or she were not applying for the national interest waiver. In a national interest waiver case, however, the evidence must establish that the physician will work in an HHS designated shortage area or a VA facility and that the petition is supported by the needed attestations from either HHS, VA, another Federal agency that has knowledge of the physician's qualifications, or a State public health department.

Can Any Federal Agency Issue a Needed Attestation?

This interim rule provides that, in order to provide an attestation, the Federal agency must possess knowledge of the alien physician's skills and have experience in making similar type attestations. In addition to HHS and the VA, this might include, for example, attestations from the medical director of a United States military hospital, The Peace Corps, or the Department of State.

Are Similar Limits Placed on State Departments of Health?

Yes, the interim rule establishes that the needed attestation must come from a State department of public health (or the equivalent), including United States territories and the District of Columbia. While the Act, as amended, states that ''a department of public health in any State'' may provide the needed attestation, the Service has concerns over how a completely decentralized system of providing attestations can effectively address the problem of physician shortages. In particular, the Service sees problems with an attestation procedure operating without a central authority in each State having oversight of the process and oversight of where the physicians are actually practicing. Therefore, the interim rule places the authority with each State department of public health to make the necessary attestations. Nothing in this interim rule prevents local departments of public health from urging the central State health department to issue attestations concerning the merits of a particular alien physician and that physician's desire to practice medicine in an HHS-designated underserved area. This policy of placing the authority to render a needed attestation with the State public health department is consistent with Service regulations that address waivers of the 2-year return home requirement for J-1 nonimmigrant physicians. See 8 CFR 212.7(c)(9)(i)(D).

The Service is also restricting such attestations to physicians intending to practice clinical medicine within the agency's territorial jurisdiction. For example, the Service will not accept an attestation from the State of Maryland Public Health Department regarding a physician proposing to practice medicine exclusively in Pennsylvania.

Is There Any Special Provision for Long-Pending Petitions?

As noted, most alien physicians must work in the area designated by the Secretary of HHS as having a shortage of health care professionals (or at the VA facility) for at least 5 years before the alien physician may obtain permanent residence status. A special rule applies if the alien physician is the beneficiary of an immigrant visa petition filed before November 1, 1998. In that case, all the other requirements apply but the alien physician may obtain permanent residence after only 3 years of qualifying service. The Service has established an administrative method to implement the noted effective dates by providing guidance at 8 CFR 204.12(d) for each group of possible petitioners and beneficiaries.

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Is This Waiver Available to an Alien Physician Who Is the Beneficiary of an Immigrant Visa Petition That the Service Denied Prior to the Amendment's Enactment Date of November 12, 1999?

If a Service decision that denied an immigrant visa petition became administratively final before November 12, 1999, the alien physician may obtain the benefit contained in the interim rule only through the filing of a new immigrant visa petition with the required evidence. The Service will not entertain motions to reopen or reconsider denied cases because the provisions of section 203(b)(2)(B)(ii) of the Act were not in effect when those particular cases were denied. Under established precedent, in order for an alien to receive a priority date, his or her petition must be fully approvable under the law that is in effect at

the time of filing. See Matter of Atembe. 19 I&N Dec. 427 (BIA 1986). The denial of a motion to reopen or reconsider, however, will be without prejudice to the filing of a new immigrant visa petition.

This restriction applies only if the denial became final before November 12, 1999. That is, if the petitioner had filed a timely appeal of the Administrative Appeals Office (AAO) which was still pending as of that date, or, if the AAO affirmed the denial but the petitioner had already sought judicial review by November 12, 1999, it will not be necessary to file a new petition. In making provision for cases filed before November 1, 1998, however, section 203(b)(2)(B)(ii)(IV) of the Act makes it clear that Congress intended to apply this new provision to all petitions that were actually pending on November 12, 1999. If a case was pending before the AAO or a Federal court on November 12, 1999, the Service will support remand of the case to the proper Service Center for a new decision in light of the new amendment. If the case is still pending before a Service Center, the visa petitioner may supplement the record with evidence that satisfies the requirements of section 203(b)(2)(B)(ii) of the Act.

At What Point in the Process May an Alien Physician Apply for Adjustment of Status?

Section 203(b)(2)(B)(ii)(III) of the Act allows any physician in receipt of an approved immigrant petition with an accompanying national interest waiver request based on full-time service in a shortage area to immediately apply for adjustment of status to that of lawful permanent resident. With a non-frivolous adjustment of status application pending, the alien physician is eligible to apply for an Employment Authorization Document (EAD) pursuant to 8 CFR 274a.12(c)(9). (Physicians with approved immigrant petitions and national interest waivers based on service in a shortage area should file the application for adjustment of status and the application for an EAD simultaneously.) This relieves the physician of having to maintain any type of valid nonimmigrant status prior to the final adjudication of the adjustment of status application. That is to say, the alien physician, under section 245(c)(7) of the Act, must have been in a lawful nonimmigrant status when the alien physician files the adjustment application, but need not remain in lawful nonimmigrant status during the entire period of medical service.

At What Point Does the Service Begin Counting the Physician's 5 or 3-year Medical Practice Requirement?

In general, the alien's 5-year or 3-year period of medical service begins when the alien starts working for the petitioner in a medically underserved area. If the physician, other than those with J-1 nonimmigrant visas, already has authorization to accept employment at the facility, the 6-year or 4-year period during which the physician must provide the service begins on the date that the Service approves the Form I-140 petition and national interest waiver. If the physician must obtain employment authorization before the physician can begin working, the 6-year or 4-year period begins on the date the Service issues an EAD. Since section 203(b)(2)(B)(ii)(II) of the Act specifically prohibits any time served in J-1 nonimmigrant status as counting towards the 5-year service requirement, J-1 physicians with approved Form I-140 petitions will have their medical service under

this rule begin on the date the physician starts his or her employment with the petitioner, and after the Service issues an EAD.

The interim rule does include a special provision for former J-1 nonimmigrant physicians who have obtained foreign residence requirement waivers. Section 214(l) of the Act, as previously amended by section 220 of Public Law 103-416, provides a special waiver of the foreign residence requirement for alien physicians who are willing to work at VA facilities or in HHS-designated underserved areas. Under section 214(l), 3 years' service as an H-1B nonimmigrant is sufficient. The interim rule makes clear that for aliens who already have a waiver under section 214(l) of the Act, the Service will calculate the 5-year or 3-year period of services of the national interest waiver under section 203(b)(2)(B)(ii) of the Act beginning on the date the alien changed from J-1 to H-1B status. That is, an alien who is subject to the foreign residence requirement will not be required to first serve for 3 years to obtain that waiver and then to serve an additional 5 years to obtain adjustment of status based on the national interest waiver.

Will the Service Hold Open an Adjustment of Status Application for the Aggregate 5 or 3-year Period?

Section 203(b)(2)(B)(ii)(II) of the Act prohibits the Attorney General from making a final determination on any adjustment of status application submitted by a physician practicing medicine full-time in a medically underserved area until the physician has had the opportunity to prove that he or she has worked full-time as a physician for an aggregate of 5 or 3 years, depending on filing date. Physicians should note that this period of service does not count any time the physician has spent in a J-1 nonimmigrant status.

The interim rule establishes two points where the alien physician must submit evidence noting his or her practice of medicine in an underserved area. First, physicians with the 5-year service requirement must make an initial submission of evidence no later than 120 days after the second anniversary of the approval of the immigrant petition, From I-140. The physician must document at least 12 months of qualifying employment during the first 2-year period. If a physician has not worked at least one year of this 2-year period, it will be mathematically impossible for the physician to reach his or her five-year mark within six years. At the end of the physician's four-year balance, evidence must be submitted that documents the employment of the final years of the 5-year aggregate service requirement. Alien physicians with the 3-year service requirement will only be required to submit evidence once, at the conclusion of the 3-years aggregate service.

As evidence, the Service will request individual tax return documents, and documentation from the employer attesting that the physician has in fact performed the required full-time clinical medical service. If a physician obtained the waiver based on his or her plan to establish his or her own practice, the physician must submit documentation proving he or she did so, including proof of the incorporation of the

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medical practice (if incorporated), business licenses, and business tax

returns.

Are the Adjustment of Status Filing Requirements Different for These Alien Physicians?

Yes. Since the Attorney General is prohibited from making the final adjudication on a physician's adjustment of status application, until the physician has submitted evidence documenting the medical service in a shortage area or areas, the interim rule establishes two modifications to the adjustment filing procedure. First, physicians will not be scheduled for fingerprinting at an Application Support Center until the physician submits evidence documenting the completion of the required years of service. Second, physicians will not submit the required medical examination report at the time of filing for adjustment. The medical report will instead be submitted with the documentary evidence noting the physician's fulfillment of the 5 or 3-year medical service requirement.

Can an Alien Physician Relocate to Another Underserved Area During the 5 or 3-year Service Period?

Yes, physicians will not be prohibited from relocating to other underserved areas. However, the interim rule establishes that any physician desiring to relocate must submit a new petition that documents the reasons for the proposed relocation. The interim rule, at 8 CFR 204.12(f), establishes the necessary procedures for the alien physician and the new petitioner to follow.

The Service will take into account the amount of time the physician is engaged in full-time practices in calculating the aggregate medical service time in the underserved areas. For example, if the physician completed 3 years of service before approval of a second petition, then only 2 more years of service would be needed to qualify for adjustment of status. However, petitioners and beneficiaries should note that the authorization to begin a medical practice in a new area does not constitute the beginning of a new 6-year period. Regardless of the number of moves, physicians are granted just one 6-year period to complete the required service time.

Will the Service Require a Physician To Relocate to Another Underserved Area If the Initial Area Loses Designation as an Underserved Area?

The interim rule does not require that a physician relocate to another underserved area should the area the physician is practicing full-time clinical medicine lose its designation as an underserved area. The purpose of such a designation is to foster a greater physician presence in underserved areas. The Service believed one of the desired results of the statutory amendment is for physicians to take up residency in these areas and become integral parts of the community. Once an area is no longer designated as an underserved area, however, the Service can no longer grant national interest waivers for physicians to practice in that area (other than for physicians who will work in a VA facility).

What Action Will the Service Take If the Alien Physician Does Not Submit the Required Evidence Needed To Complete the Adjustment Process?

The interim rule establishes, at section 245.18(i), that the Service will deny the application for adjustment of status and revoke approval of the Form I-140 if a physician fails to file proof of the physician's completion of the service requirement in a timely fashion.

Request for Comments

The Service is seeking public comments regarding this interim rule. In particular, the Service is interested in hearing from States on the Service's intended method of vesting State departments of public health with the authority to issue attestations for alien physicians. The Service welcomes suggestions on this and all other topics concerning the information contained within this interim rule.

Good Cause Exception

The Service's implementation of this rule as an interim rule, with provisions for post-promulgation public comments, is based on the "good cause" exceptions found at 5 U.S.C. 553 (b)(B) and (d)(3). The reason and necessity for immediate implementation of this interim rule without prior notice and comment is that the new legislation became effective upon enactment and requires the Service to alter the processing of immigrant petitions where the petitioner is requesting a national interest waiver based on service as a physician at a VA facility or in an area designated by the Secretary of HHS as having a shortage of health care professionals. Issuing an interim rule allows the regulatory provisions to become effective in a relatively short period of time, and allows alien physicians to begin taking advantage of the new provisions without further delays.

The Service is also aware of the effect that delays in issuing these interim regulations may have on public health in underserved areas of the United States. For this reason, the Service has already consulted with and incorporated suggestions from other Federal agencies involved with physician shortage issues, including HHS, the VA, the Departments of State and Agriculture, and the Appalachian Regional Commission.

For these reasons, the Commissioner has determined that delaying the implementation of this rule would be unnecessary and contrary to the public interest, and that there is good cause for dispensing with the requirements of prior notice. However, the Service welcomes public comment on this interim rule and will address those comments prior to the implementation of the final rule.

Regulatory Flexibility Act

The Commissioner of the Immigration and Naturalization Service, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that the rule will not have a significant economic impact on a substantial number of small entities. While some physicians will self-petition and establish self-operated medical practices or clinics, the Service anticipates that the majority of physicians taking advantage of the provisions outlined within this regulation will be employed by hospitals, clinics, or other medical facilities. In these instances, the effect on hospitals, clinics, or other medical facilities considered small entities will be positive by expanding the labor pool of qualified

physicians eligible to be employed in designated underserved areas.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any 1-year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse

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effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12866

This rule is considered by the Department of Justice, Immigration and Naturalization Service, to be a ''significant regulatory action'' under Executive Order 12866, section 3(f), Regulatory Planning and Review. Under Executive Order 12866, section 6(a)(3)(B)-(D), this proposed rule has been submitted to the Office of Management and Budget for review. This rule is mandated by the Nursing Relief for Disadvantaged Areas Act of 1999 in order to create an incentive for qualified alien physicians to practice medicine in medically underserved areas of the United States.

Executive Order 13132

This rule will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient Federalism implications to warrant the preparation of a federalism summary impact statement.

Executive Order 12988 Civil Justice Reform

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of E.O. 12988.

Paperwork Reduction Act of 1995

The evidence requirements contained in Sec. 204.12 and Sec. 245.18 that must be submitted with the Forms I-140 and I-485 are considered information collections. Since a delay in issuing this interim rule

could have an impact in providing public health services in underserved areas of the United States, the Service is using emergency review procedures for review and clearance by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act (PRA) of 1995.

The OMB approval has been requested by September 21, 2000. If granted, the emergency approval is only valid for 180 days. Comments concerning the information collection should be directed to: Office of Information and Regulatory Affairs, OMB Desk Officer for the Immigration and naturalization Service, Office of Management and Budget, Room 10235, Washington, DC 20503.

During the first 60 days of this same period a regular review of this information will also be undertaken. Written comments are encouraged and will be accepted until November 6, 2000. Your comments should address one or more of the following points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

The Service, in calculating the overall burden this requirement will place upon the public, estimates that approximately 8,000 physicians may apply for the national interest waivers annually. The Service also estimates that it will take the physicians approximately 1 hour to comply with the new requirements as noted in this interim rule. This amounts to 8,000 total burden hours.

Organizations and individuals interested in submitting comments regarding this burden estimate or any aspect of these information collection requirements, including suggestions for reducing the burden, should direct them to: Immigration and Naturalization Service, Director, Policy Directives and Instructions Branch, 425 I Street NW., Room 5307, Washington, DC 20536.

List of Subjects

8 CFR Part 204

Administrative practice and procedures, Aliens, Employment, Immigration, Petitions.

8 CFR Part 245

Aliens, Immigration, Reporting and recordkeeping requirements.

Accordingly, chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 204--IMMIGRANT PETITIONS

1. The authority citation for part 204 continues to read as follows:

Authority: 8 U.S.C. 1101, 1003, 1151, 1153, 1154, 1182, 1186a, 1255, 1641; 8 CFR part 2.

2. Section 204.12 is added to read as follows:

Sec. 204.12 How can second-preference immigrant physicians be granted a national interest waiver based on service in a medically underserved area or VA facility?

(a) Which physicians qualify? Any alien physician (namely doctors of medicine and doctors of osteopathy) for whom an immigrant visa petition has been filed pursuant to section 203(b)(2) of the Act shall be granted a national interest waiver under section 203(b)(2)(B)(ii) of the Act if the physician requests the waiver in accordance with this section and establishes that:

(1) The physician agrees to work full-time (40 hours per week) in a clinical practice for an aggregate of 5 years (not including time served in J-1 nonimmigrant status); and

(2) The service is;

(i) In a geographical area or areas designated by the Secretary of Health and Human Services (HHS) as a Medically Underserved Area, a Primary Medical Health Professional Shortage Area, or a Mental Health Professional Shortage Area, and in a medical speciality that is within the scope of the Secretary's designation for the geographical area or areas; or

(ii) At a health care facility under the jurisdiction of the Secretary of Veterans Affairs (VA); and

(3) A Federal agency or the department of public health of a State, territory of the United States, or the District of Columbia, has previously determined that the physician's work in that area or facility is in the public interest.

(b) Is there a time limit on how long the physician has to complete the required medical service?

(1) If the physician already has authorization to accept employment (other than as a J-1 exchange alien), the beneficiary physician must complete the aggregate 5 years of qualifying full-time clinical practice during the 6-year period beginning on the date of approval of the Form I-140.

(2) If the physician must obtain authorization to accept employment before the physician may lawfully begin working, the physician must complete the aggregate 5 years of qualifying full-time clinical practice during the 6-year period beginning on the date of the Service issues the necessary employment authorization document.

(c) Are there special requirements for these physicians? Petitioners requesting the national interest waiver is described in this section on behalf of a qualified alien physician, or alien physicians self-

petitioning for second preference classification, must meet all eligibility requirements found in paragraphs (k)(1) through (k)(3) of Sec. 204.5. In addition, the petitioner or self-petitioner must submit the following evidence with Form I-140 to support the request for a national interest waiver. Physicians planning to divide the practice of full-time clinical medicine between more than one underserved area must submit the following evidence for each area of intended practice.

(1)(i) If the physician will be an employee, a full-time employment contract for the required period of clinical medical practice, or an employment commitment letter from a VA facility. The contract or letter must have been issued and dated within 6 months prior to the date the petition is filed.

(ii) If the physician will establish his or her own practice, the physician's sworn statement committing to the full-time practice of clinical medicine for the required period, and describing the steps the physician has taken or intends to actually take to establish the practice.

(2) Evidence that the physician will provide full-time clinical medical service:

(i) In a geographical area or areas designated by the Secretary of HHS as having a shortage of health care professionals and in a medical speciality that is within the scope of the Secretary's designation for the geographical area or areas; or

(ii) In a facility under the jurisdiction of the Secretary of VA.

(3) A letter (issued and dated within 6 months prior to the date on which the petition is filed) from a Federal agency or from the department of public health (or equivalent) of a State or territory of the United States or the District of Columbia, attesting that the alien physician's work is or will be in the public interest.

(i) An attestation from a Federal agency must reflect the agency's knowledge of the alien's qualifications and the agency's background in making determinations on matters involving medical affairs so as to substantiate the finding that the alien's work is or will be in the public interest.

(ii) An attestation from the public health department of a State, territory, or the District of Columbia must reflect that the agency has jurisdiction over the place where the alien physician intends to practice clinical medicine. If the alien physician intends to practice clinical medicine in more than one underserved area, attestations from each intended area of practice must be included.

(4) Evidence that the alien physician meets the admissibility requirements established by section 212(a)(5)(B) of the Act.

(5) Evidence of the Service-issued waivers, if applicable, of the requirements of sections 212(e) of the Act, if the alien physician has been a J-1 nonimmigrant receiving medical training within the United States.

(d) How will the Service process petitions filed on different dates?

(1) Petitions filed on or after November 12, 1999. For petitions filed on or after November 12, 1999, the Service will approve a national interest waiver provided the petitioner or beneficiary (if self-petitioning) submits the necessary documentation to satisfy the requirements of section 203(b)(2)(B)(ii) of the Act and this section, and the physician is otherwise eligible for classification as a second preference employment-based immigrant. Nothing in this section relieves the alien physician from any other requirement other than that of

fulfilling the labor certification process as provided in Sec. 204.5(k)(4).

(2) Petitions pending on November 12, 1999. Section 203(b)(2)(B)(ii) of the Act applies to all petitions that were pending adjudication as of November 12, 1999 before a Service Center, before the associate Commissioner for Examinations, or before a Federal court. Petitioners whose petitions were pending on November 12, 1999, will not be required to submit a new petition, but may be required to submit supplemental evidence noted in paragraph (c) of this section. The requirement that supplemental evidence be issued and dated within 6 months prior to the date on which the petition is filed is not applicable to petitions that were pending as of November 12, 1999. If the case was pending before the Associate Commissioner for Examinations or a Federal court on November 12, 1999, the petitioner should ask for a remand to the proper Service Center for consideration of this new evidence.

(3) Petitions denied on or after November 12, 1999. The Service Center or the Associate Commissioner for Examinations shall reopen any petition affected by the provision of section 203(b)(2)(B)(ii) of the Act that the Service denied on or after November 12, 1999, but prior to the effective date of this rule.

(4) Petitions filed prior to November 1, 1998. For petitions filed prior to November 1, 1998, and still pending as of November 12, 1999, the Service will approve a national interest waiver provided the beneficiary fulfills the evidence requirements of paragraph (c) of this section. Alien physicians that are beneficiaries of pre-November 1, 1998, petitions are only required to work full-time as a physician practicing clinical medicine for an aggregate of 3 years, rather than 5 years, not including time served in J-1 nonimmigrant status, prior to the physician either adjusting status under section 245 of the Act or receiving a visa issued under section 204(b) of the Act. The physician must complete the aggregate of 3 years of medical service within the 4-year period beginning on the date of the approval of the petition, if the physician already has authorization to accept employment (other than as a J-1 exchange alien). If the physician does not already have authorization to accept employment, the physician must perform the service within the 4-year period beginning the date the Service issues the necessary employment authorization document.

(5) Petitions filed and approved before November 12, 1999. An alien physician who obtained approval of a second preference employment-based visa petition and a national interest waiver before November 12, 1999, is not subject to the service requirements imposed in section 203(b)(2)(B)(ii) of the Act. If the physician obtained under section 214(1) of the Act a waiver of the foreign residence requirement imposed under section 212(e) of the Act, he or she must comply with the requirements of section 214(1) of the Act in order to continue to have the benefit of that waiver.

(6) Petitions denied prior to November 12, 1999. If a prior Service decision denying a national interest waiver under section 203(b)(2)(B) of the Act became administratively final before November 12, 1999, an alien physician who believes that he or she is eligible for the waiver under the provisions of section 203(b)(2)(B)(ii) of the Act may file a new Form I-140 petition accompanied by the evidence required in paragraph (c) of this section. The Service must deny any motion to reopen or reconsider a decision denying an immigrant visa petition if the decision became final before November 12, 1999, without prejudice

to the filing of a new visa petition with a national interest waiver request that comports with section 203(b)(2)(B)(ii) of the Act.

(e) May physicians file adjustment of status applications? Upon approval of a second preference employment-based immigrant petition, Form I-140, and national interest waiver based on a full-time clinical practice in a shortage area or areas of the United States, an alien physician may submit Form I-485, Application to Register Permanent Residence or Adjust Status, to the

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appropriate Service Center. The Service will not approve the alien physician's application for adjustment of status until the alien physician submits evidence documenting that the alien physician has completed the period of required service. Specific instructions for alien physicians filing adjustment applications are found in Sec. 245.18 of this chapter.

(f) May a physician practice clinical medicine in a different underserved area? Physicians in receipt of an approved Form I-140 with a national interest waiver based on full-time clinical practice in a designated shortage area and a pending adjustment of status application may apply to the Service if the physician is offered new employment to practice full-time in another underserved area of the United States.

(1) If the physician beneficiary has found a new employer desiring to petition the Service on the physician's behalf, the new petitioner must submit a new Form I-140 (with fee) with all the evidence required in paragraph (c) of this section, including a copy of the approval notice from the initial Form I-140. If approved, the new petition will be matched with the pending adjustment of status application. The beneficiary will retain the priority date from the initial Form I-140. The Service will calculate the amount of time the physician was between employers so as to adjust the count of the aggregate time served in an underserved area. This calculation will be based on the evidence the physician submits pursuant to the requirements of Sec. 245.18(d) of this chapter. An approved change of practice to another underserved area does not constitute a new 6-year period in which the physician must complete the aggregate 5 years of service.

(2) If the physician intends to establish his or her own practice, the physician must submit a new Form I-140 (with fee) will all the evidence required in paragraph (c) of this section, including the special requirement of paragraph (c)(1)(ii) of this section and a copy of the approval notice from the initial Form I-140. If approved, the new petition will be matched with the pending adjustment of status application. The beneficiary will retain the priority date from the initial Form I-140. The Service will calculate the amount of time the physician was between practices so as to adjust the count of the aggregate time served in an underserved area. This calculation will be based on the evidence the physician submits pursuant to the requirements of Sec. 245.18(d) of this chapter. An approved change of practice to another underserved area does not constitute a new 6-year period in which the physician must complete the aggregate 5 years of service.

(g) Do these provisions have any effect on physicians with foreign residence requirements? Because the requirements of section 203(b)(2)(B)(ii) of the Act are not exactly the same as the requirements of section 212(e) or 214(l) of the Act, approval of a

national interest waiver under section 203(b)(2)(B)(ii) of the Act and this paragraph does not relieve the alien physician of any foreign residence requirement that the alien physician may have under section 212(e) of the Act.

PART 245--ADJUSTMENT OF STATUS TO THAT OF PERSON ADMITTED FOR PERMANENT RESIDENCE

3. The authority citation for part 245 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1182, 1255, sec. 202. Pub. L. 105-100, 111 Stat. 2160, 2193; sec. 902, Pub. L. 105-277, 112 Stat. 2681; and 8 CFR part 2.

4. Section 245.18 is added to read as follows:

Sec. 245.18 How can physicians (with approved Forms I-140) that are serving in medically underserved areas or at a Veterans Affairs facility adjust status?

(a) Which physicians are eligible for this benefit? Any alien physician who has been granted a national interest waiver under Sec. 204.12 of this chapter may submit Form I-485 during the 6-year period following Service approval of a second preference employment-based immigrant visa petition.

(b) Do alien physicians have special time-related requirements for adjustment?

(1) Alien physicians who have been granted a national interest waiver under Sec. 204.12 of this chapter must meet all the adjustment of status requirements of this part.

(2) The Service shall not approve an adjustment application filed by an alien physician who obtained a waiver under section 203(b)(2)(B)(ii) of the Act until the alien physician has completed the period of required service established in Sec. 204.12 of this chapter.

(c) Are the filing procedures and documentary requirements different for these particular alien physicians? Alien physicians submitting adjustment applications upon approval of an immigrant petition are required to follow the procedures outlined within this part with the following modifications.

(1) Delayed fingerprinting. Fingerprinting, as noted in the Form I-485 instructions, will not be scheduled at the time of filing. Fingerprinting will be scheduled upon the physician's completion of the required years of service.

(2) Delayed medical examination. The required medical examination, as specified in Sec. 245.5, shall not be submitted with Form I-485. The medical examination report shall be submitted with the documentary evidence noting the physician's completion of the required years of service.

(d) Are alien physicians eligible for Form I-766, Employment Authorization Document?

(1) Once the Service has approved an alien physician's Form I-140 with a national interest waiver based upon full-time clinical practice in an underserved waiver based upon full-time clinical practice in an underserved area or at a Veterans Affairs facility, the alien physician should apply for adjustment of status to that of lawful permanent

resident on Form I-485, accompanied by an application for an Employment Authorization Document (EAD), Form I-765, as specified in Sec. 274a.12(c)(9) of this chapter.

(2) Since section 203(b)(2)(B)(ii) of the Act requires the alien physician to complete the required employment before the Service can approve the alien physician's adjustment application, an alien physician who was in lawful nonimmigrant status when he or she filed the adjustment application is not required to maintain a nonimmigrant status while the adjustment application remains pending. Even if the alien physician's nonimmigrant status expires, the alien physician shall not be considered to be unlawfully present, so long as the alien physician is practicing medicine in accordance with Sec. 204.5(k)(4)(iii) of this chapter.

(e) When does the Service begin counting the physician's 5-year or 3-year medical practice requirement? Except as provided in this paragraph, the 6-year period during which a physician must provide the required 5 years of service begins on the date of the notice approving the Form I-140 and the national interest waiver. Alien physicians who have a 3-year medical practice requirement must complete their service within the 4-year period beginning on that date.

(1) If the physician does not already have employment authorization and so must obtain employment authorization before the physician can begin working, then the period begins on the date the Service issues the employment authorization document.

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(2) If the physician formerly held status as a J-1 nonimmigrant, but obtained a waiver of the foreign residence requirement and a change of status to that of an H-1B nonimmigrant, pursuant to section 214(1) of the Act, as amended by section 220 of Public Law 103-416, and Sec. 212.7(c)(9) of this chapter, the period begins on the date of the alien's change from J-1 to H-1B status. The Service will include the alien's compliance with the 3-year period of service required under section 214(l) in calculating the alien's compliance with the period of service required under section 203(b)(2)(B)(ii)(II) of the Act and this section.

(3) An alien may not include any time employed as a J-1 nonimmigrant physician in calculating the alien's compliance with the 5 or 3-year medical practice requirement. If an alien is still in J-1 nonimmigrant status when the Service approves a Form I-140 petition with a national interest job offer waiver, the aggregate period during which the medical practice requirement period must be completed will begin on the date the Service issues an employment authorization document.

(f) Will the Service provide information to the physician about evidence and supplemental filings? Upon receipt of the adjustment application, the Service shall provide the physician with the following information and projected timetables for completing the adjustment process.

(1) The Service shall note the date that the medical service begins (provided the physician already had work authorization at the time the Form I-140 was filed) or the date that an employment authorization document was issued.

(2) A list of the evidence necessary to satisfy the requirements of paragraphs (g) and (h) of this section.

(3) A projected timeline noting the dates that the physician will need to submit preliminary evidence two years and 120 days into his or here medical service in an underserved area or VA facility, and a projected date six years and 120 days in the future on which the physician's final evidence of completed medical service will be due.

(g) Will physicians be required to file evidence prior to the end of the 5 or 3-year period?

(1) For physicians with a 5-year service requirement, no later than 120 days after the second anniversary of the approval of Petition for Immigrant Worker, Form I-140, the alien physician must submit to the Service Center having jurisdiction over his or her place of employment documentary evidence that proves the physician has in fact fulfilled at least 12 months of qualifying employment. This may be accomplished by submitting the following.

(i) Evidence noted in paragraph (h) of this section that is available at the second anniversary of the I-140 approval.

(ii) Documentation from the employer attesting to the fill-time medical practice and the date on which the physician began his or her medical service.

(2) Physicians with a 3-year service requirement are not required to make a supplemental filing, and must only comply with the requirements of paragraph (h) of this section.

(h) What evidence is needed to prove final compliance with the service requirement? No later than 120 days after completion of the service requirement established under Sec. 204.12(a) of this section, an alien physician must submit to the Service Center having jurisdiction over his or her place of employment documentary evidence that proves the physician has in fact satisfied the service requirement. Such evidence must include, but is not limited to:

(1) Individual Federal income tax returns, including copies of the alien'sW-2 forms, for the entire 3-year period of the balance years of the 5-year period that follow the submission of the evidence required in paragraph (e) of this section;

(2) Documentation from the employer attesting to the full-time medical service rendered during the required aggregate period. The documentation shall address instances of breaks in employment, other than routine breaks such as paid vacations;

(3) If the physician established his or her own practice, documents noting the actual establishment of the practice, including incorporation of the medical practice (if incorporated), the business license, and the business tax returns and tax withholding documents submitted for the entire 3 year period, or the balance years of the 5-year period that follow the submission of the evidence required in paragraph (e) of this section.

(i) What if the physician does not comply with the requirements of paragraphs (f) and (g) of this section? If an alien physician does not submit (in accordance with paragraphs (f) and (g) of this section) proof that he or she has completed the service required under Sec. 204(n) of this chapter, the Service shall serve the alien physician with a written notice of intent to deny the alien physician's application for adjustment of status and, after the denial is finalized, to revoke approval of the Form I-140 and national interest waiver. The written notice shall require the alien physician to provide the evidence required by paragraph (f) or (g) of this section within 30 days of the date of the written notice. The Service shall not extend this 30-day period. If the alien physician fails to submit the evidence

within the 30-day period established by the written notice, the Service shall deny the alien physician's application for adjustment of status and shall revoke approval of the Form I-140 and of the national interest waiver.

(j) Will a Service officer interview the physician?

(1) Upon submission of the evidence noted in paragraph (h) of this section, the Service shall match the documentary evidence with the pending form I-485 and schedule the alien physician for fingerprinting at an Application Support Center.

(2) The local Service office shall schedule the alien for an adjustment interview with a Service officer, unless the Service waives the interview as provided in Sec. 245.6. The local Service office shall also notify the alien if supplemental documentation should either be mailed to the office, or brought to the adjustment interview.

(k) Are alien physicians allowed to travel outside the United States during the mandatory 3 or 5-year service period? An alien physician who has been granted a national interest waiver under Sec. 204.12 of this chapter and has a pending application for adjustment of status may travel outside of the United States during the required 3 or 5-year service period by obtaining advanced parole prior to traveling. Alien physicians may apply for advanced parole by submitting form I-131, Application for Travel Document, to the Service office having jurisdiction over the alien physician's place of business.

(l) What if the Service denies the adjustment application? If the Service denies the adjustment application, the alien physician may renew the application in removal proceedings.

Dated: August 30, 2000.
Doris Meissner,
Commissioner, Immigration and Naturalization Service.
[FR Doc. 00-22832 Filed 9-5-00; 8:45 am]
BILLING CODE 4410-10-M

U.S. Department of Justice
Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

July 3, 2001

The Honorable George W. Gekas
Chairman
Subcommittee on Immigration and Claims
Committee on the Judiciary
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

Enclosed please find responses to questions Congressman Cannon posed to Ms. Peggy Philbin, Acting Director of the Executive Office for Immigration Review, following the Subcommittee's hearing of May 15, 2001, regarding oversight of that Office. Please let us know if we may be of additional assistance in connection with this or any other matter.

Sincerely,

Daniel J. Bryant
Assistant Attorney General

Enclosure

cc: The Honorable Sheila Jackson Lee
Ranking Minority Member

The Honorable Chris Cannon

EOIR Responses to Questions Submitted by Congressman Chris Cannon Subsequent to EOIR Acting Director Peggy Philbin's Testimony before the Subcommittee on Immigration and Claims, Committee on the Judiciary U.S. House of Representatives May 15, 2001

Questions for INS/EOIR Witness - Ms. Peggy Philbin

1. **Notice to appear/Change of address, counsel:**

There seems to be a substantial gap in time between when the Notice to Appear (NTA) is issued by the INS to the time that the NTA is filed with the Immigration Courts - in some cases, as much as a year. Because the INS and the EOIR maintain two separate record systems, the respondents have no way to report changes in counsel, address, etc., from the time that the INS issues an NTA to the time that the NTA is actually filed with the Immigration Courts. INS will not accept the change of address or counsel after the NTA has been issued, but the EOIR will not accept the change of address or counsel until the NTA has been filed with the court. In the meantime, people are being ordered removed in absentia because their hearing notices are being sent to old addresses or former counsels. Also, jurisdiction for NACARA and similar relief has been divided between the Immigration Courts, for those who are under removal proceedings, and the INS Service Centers, for those who are not. But the slowness in filing NTAs has created a kind of limbo in which persons eligible for relief are not allowed to file anywhere. When this happens, the Service Centers refuse to accept the cases because of the issuance of the NTA, but the courts cannot hear the claim because the NTA was never filed.

Why does INS take so long to file an NTA after it has been issued?

We are unaware of any widespread delay in filing; it is usually done within ten days. There are, however, legitimate reasons for delaying the filing of an NTA with EOIR, such as obtaining the original file or obtaining certified conviction records to support the charges. We would be happy to look into specific cases that may be of concern to you or other Members of the Subcommittee.

Please explain why INS and EOIR cannot have a single system which would provide both agencies with the most up-to-date information about the respondents and their counsel.

EOIR and INS currently have some data-sharing capabilities. For example, INS uses an interactive scheduling program to automatically calendar cases on the EOIR docket when an alien's application for asylum is denied by the INS and referred to the immigration court for

commencement of removal proceedings. Also, EOIR and INS have access to the same data base to check for conflicting address information in detained cases. EOIR is in the process of examining further refinements of its data base sharing capability. Additionally, EOIR is presently in a multi-year process of upgrading its systems to allow the INS to electronically file (e-file) all charging documents and automatically schedule the case on the immigration court calendar.

EOIR respectfully disagrees with the statement that it will not accept a change of address form until the NTA has been filed with the court. Part of the EOIR data base includes a special section for entering in change of address information (Form EOIR - 33) from an alien who has been served with a charging document by the INS, but whose charging document has not yet been filed with the immigration court. EOIR keeps this information on file until such time as the INS files a charging document with the court.

What provision will INS and EOIR make to ensure that persons eligible for NACARA and similar relief have a venue in which to apply?

EOIR does not have jurisdiction over a case or authority to assist aliens in pursuing NACARA relief, until the INS both serves and files a Notice to Appear. 8 C.F.R. § 240.63(b). Thus, absent a properly filed Notice to Appear, venue always lies with the INS.

Additional Questions for EOIR

1. **Ordering removal where an immigrant petition is pending. Like it or not, EOIR must cope with the impact of INS' slow processing. Nowhere is this more profound than for individuals in removal proceedings who have immigrant petitions pending at INS and are eligible for relief, except that INS has not gotten to their petitions. Immigration Judges should not be ordering removal for people in this situation, yet it happens with depressing frequency. What steps has EOIR taken to instruct its judges to continue cases until the petition is adjudicated by INS, and to work with INS to find a means to resolve this problem?**

   Typically, Immigration Judges continue cases while petitions are pending. EOIR has worked out an agreement with the INS whereby Immigration Judges identify cases that have been continued in excess of 90 days by reason of an INS delay in adjudicating the immigrant petitions. EOIR then sends the list of these "older than 90 days" cases to INS. In addition, EOIR is exploring with INS other possible solutions.

2. **Video hearing**:

   It is my understanding that Immigration Courts are conducting removal hearings, including evidentiary hearings on claims for asylum, by video conferencing rather than in person. While the use of video conferencing in removal hearings is permitted by the

statute, I believe it has been used in a manner that violates people's right to a full and fair hearing.

How many Immigration Courts have video conferencing capacity?

Twenty-six Immigration Courts currently have video teleconferencing (VTC) capability, with one unit pending installation at the Honolulu Immigration Court. For fiscal year 2001, appropriations were earmarked for EOIR to receive additional VTC systems. The additional 12 units are to be added (or supplement current numbers) to the following Immigration Courts: Tucson, AZ, Los Angeles, CA, Lancaster, CA, Hartford, CT, Bradenton, FL, Orlando FL, Atlanta, GA, Kansas City, KA [detail court], Omaha, NE [detail court], Cincinnati, OH [detail court], Cleveland, OH [detail court], and Dallas, TX. In addition, EOIR also hopes to install units at each of the following federal institutions: Lompoc Federal Correctional Institution, CA, Danbury Federal Correctional Institution, CT, Lewis Prison, CT, Bradenton Detention Center, FL, and Navarro County Jail, TX.

How many Immigration Courts are actually using video conferencing in removal hearings?

Currently, twenty-one of the twenty-six Immigration Courts with VTC equipment are using it to conduct removal proceedings. The five which are not using it include the El Centro, Imperial, Las Vegas, San Juan, and Wackenhut-Queens Immigration Courts. These five courts are working to resolve technical issues that have prevented the use of VTC.

Under what circumstances are video conferencing used in removal hearings? For example, are they used in master hearings, evidentiary hearings on the merits? In what type of cases (ex. asylum, cancellation of removal)?

Video teleconferencing is overwhelmingly used in the criminal detention setting in which the respondent has little, if any, legal relief available.

The equipment has been very successful in many remote detention locations and has been of considerable use in the Institutional Hearing Program. It allows expeditious hearings to individuals in remote locations who would otherwise have to wait longer until their cases could be heard. In some cases, the remoteness of the facility means that the case will not be heard at all until the alien comes into Service custody.

The use of the video also provides assistance of counsel who otherwise could not represent detainees during their immigration proceedings, as pro bono counsel are usually unwilling to travel to remote locations.

Further, the video teleconferencing equipment enables the Institutional Hearing Program to function more efficiently and economically by reducing the amount of Government travel

to conduct hearings at remote locations. Detainees who otherwise would have to be transferred to facilities where an Immigration Court resides are able to have their cases heard in their resident facility. Security issues are also addressed through the use of video equipment. Video hearings means fewer movement of detainees to hearing sites and also means that detainees who are classified at a higher security level may have an immigration hearing without having to leave their secure unit in their resident facility.

When video teleconferencing is used, it is generally for the initial master calendar hearing. In this setting, the Immigration Judge is collecting administrative information from the respondent, providing required warnings and general information about the conduct of the proceeding, determining whether the respondent is, in fact, deportable, which is generally a legal matter, and soliciting whether the respondent intends on seeking any form of relief.

Video teleconferencing is rarely used to complete an individual merits hearing, although there are instances where it may occur. The Immigration Judges have the discretion to decide whether to go forward on an individual merits hearing via televideo conferencing.

As for its use, the equipment has several features that provide the participants with the ability to clarify issues that may arise. The video camera has a zoom feature that allows close-up shots of documents, so that the Immigration Judge can ensure that all are referring to the same documents when questions arise. The camera also has a feature that allows multiple pictures simultaneously, so that the detainee may view the attorneys, witnesses, and interpreter who are in the courtroom, in addition to the Immigration Judge. In addition to the video camera, there is also a fax machine available to the detainee, enabling him to send the immigration judge any documents that he wishes.

How is the quality of the video conferencing transmission?

The INS has recently upgraded some its video teleconferencing equipment, with the result that most of it is state-of-the-art. That agency is currently replacing any outdated equipment. We are unaware of any complaints as to the transmission quality of the equipment. However, if problematic situations arise during the transmission of a hearing, the Immigration Judge can and will continue the case and schedule it for another date. The Court will also inform the INS of the transmission problem to allow that agency to take appropriate action, since INS owns and maintains the existing equipment.

How do respondents communicate with their attorneys or representatives during video hearings? What efforts has the EOIR made to ensure that the respondents can communicate privately with their attorneys immediately before, during, and after the hearing?

Attorneys make private arrangements to speak with their clients and to prepare for a hearing before the Immigration Judge. As the INS contracts with detention facilities, or maintains

their own detention facility, counsel are obligated to abide by the rules and regulations of the INS or the county jail, state penitentiary, or federal Bureau of Prisons directives regarding when, how, and under what conditions they are allowed to speak with their clients.

Nonetheless, it is the practice of the Immigration Courts to facilitate communication by allowing attorneys and their clients, who are not physically located at the same site as the attorney, to speak via televideo out of the presence of the Immigration Judge and the INS Trial Attorney prior to the hearing. In addition, Immigration Judges will sometimes recess during the hearing to allow the attorney and client to confer about issues and facts that may have developed during the course of testimony. At the conclusion of the hearing, the attorney and his client may debrief via the attorney's on-site visit or by telephone call.

The Office of the Chief Immigration Judge is considering implementing a dedicated telephone line between the attorney and his client when the two are at separate locations. This would allow the respondent to simply lift the telephone handset and communicate with his attorney on-the-spot with less disruption in the proceeding.

Is EOIR monitoring which cases are being adjudicated through video conferencing and which cases are being decided in person?

At this time, EOIR does not monitor the types of cases being adjudicated through televideo conferencing versus those being decided in-person.

Does EOIR know whether reliefs such as asylum are being granted or denied at similar rates in video hearings as they are in-person hearings?

At this time, EOIR has not studied whether the grant and denial rate for asylum varies from televideo conferencing hearings to those held in-person. Immigration Judges conducting hearings are obligated to apply uniformly the same standard to asylum seekers, that being whether the individual has a "well-founded fear of persecution on account of race, religion, nationality, political opinion, or membership in a particular social group." Asylum seekers are given the same opportunity to make their claims asserting persecution, whether they are in a detained or non-detained setting and irrespective of whether their hearing is held through televideo or in-person.

3. **Variation in Asylum Approval Rates**

A recent series of articles in The Los Angeles Times highlighted some disturbing problems with the Immigration Courts' adjudication of asylum claims. One particularly chilling aspect was the low percentage of asylum grants by some Immigration Judges. For example, Immigration Judge William F. Jankun of New York only granted 28 out of 2,050, or 1.4%, of the asylum cases that he heard. In contrast, two other Immigration Judges in New York granted over 40% of the asylum

cases they heard. What accounts for such a variation in asylum approval rates in the same city?

The purpose of the asylum process is to provide refuge to individuals who have a "well-founded fear of persecution on account of race, religion, nationality, political opinion or membership in a particular social group." That principle or standard is applied uniformly in every Immigration Court. Furthermore, all asylum seekers, regardless of nationality or background, are given an equal opportunity to make their claims of a well-founded fear of persecution in a system that provides due process, including rights to appeal from the Immigration Court and the Board of Immigration Appeals, to federal court.

Although the standards applied to each case are uniform, the cases are not. While there are differences among Immigration Judges, disparities between grant rates of individual judges are a reflection of the type of cases which appear before him or her. This is further bolstered by the fact that the Board reversal rate of Immigration Judges is only 3%. EOIR takes pride in the diversity of our judges, and the fact that each case is adjudicated on its own merits, but under the same standards. An alien, of course, can challenge a denial of a case he or she believes was issued in error by seeking appeal of the decision. Moreover, if an alien is concerned regarding the behavior, conduct or demeanor of a particular Immigration Judge, he or she also has the option of filing a complaint with the Office of Professional Responsibility.

Questions for INS and EOIR witnesses:

1. Are you familiar with the proposals of Lutheran Immigration and Refugee Service [LIRS] for live legal orientation presentations for immigration detainees and for alternatives to detention for asylum seekers and others in immigration detention? If so, can you give us an evaluation of the soundness of these proposals?

EOIR is aware of the proposals by LIRS and the United States Catholic Charities for Legal Orientation Presentations and Alternative to Detention projects. Legal Orientation Presentations are one and the same with Rights Presentations and are based on the Florence Project's original "Justice Efficiency Model" ("Know Your Rights" group rights presentations). EOIR piloted three sites in the Summer of 1998 and positively evaluated the concept. The 'Alternative to Detention' projects, while obviously directed to the INS Detention system, involve supervised release of aliens who, with proper counseling and services, have low 'failure to appear' rates at scheduled Immigration Court hearings. One of the key aspects of such a program is the provision of legal information, counseling, and pro bono representation to detainees who are pre-screened as good candidates for such programs (i.e., asylum seekers and Lawful Permanent Residents with strong community ties). Thus, such programs can have a direct impact on the rates of appearance and representation for aliens in removal proceedings, which benefits EOIR as a whole.

2(a). Live legal orientation presentations by nongovernmental organizations for immigration detainees have been pilot tested in three sites. Can you comment on the benefits or detriments to such programs? Did they help to achieve faster resolution of cases, to improve security through reduced tension and/or save the government money?

EOIR's evaluation of these programs is available on our Internet site (www.usdoj/eoir.gov) The following is a quote from the Executive Summary:

> Based on the case data from the pilot period, the rights presentation has the potential to save both time and money for the government while also benefitting detainees. During the pilot, cases were completed faster and detainees, with potential meritorious claims to relief, were more likely to obtain representation. Moreover, the rights presentation is a useful management tool for controlling a detained population and may strengthen the capability of the INS to operate safer detention facilities.
>
> However, several barriers to replicating the rights presentation exist. The most significant barrier is funding, although avenues for alternative funding or less expensive videotape presentation may provide some solutions. Further, the cost of expansion of the pilot could potentially be offset when detainees, with no recourse of relief, accept a removal order after attending a rights presentation. In those cases, INS turns over a detention bed more quickly. Although both EOIR and INS need to address and resolve barriers, expansion of the rights presentation should be considered.

EOIR, through its Pro Bono Program, encourages pro bono representation of aliens in immigration proceedings and supports efforts to establish and expand upon *pro bono* legal services for aliens detained by the INS in immigration removal proceedings. Of particular importance to the Pro Bono Program are the innovative legal service models that are being developed across the country. Several non-profit agencies have been developing unique approaches to helping capable individuals help themselves through well-developed and clearly presented self-help workshops and distribution of self-help written legal materials. These efforts, known as "Know Your Rights" group rights presentation projects, or Legal Orientation Presentations, greatly enhance the Immigration Court's ability to fairly and expeditiously decide cases presented before it. Immigration Judges who have witnessed the work of such assistance efforts have noticed remarkable improvements in the detained immigrant's understanding of their legal rights and responsibilities, as well as their ability to retain pro bono counsel or present their own case in absence thereof. Since detained aliens are generally better prepared to go forward at their hearings under such efforts, fewer adjournments are requested and the Immigration Judge's decision is issued earlier, resulting in more efficient and effective court proceedings.

2(b). The INS has also experimented with alternatives to detention for asylum seekers and others through contracts with nongovernmental organizations such as Catholic

Charities in New Orleans, Lutheran Immigration and Refugee Service in Ullin, IL and Vera Institute in New York. Can you comment on the effectiveness of such programs. How high were their participants' appearance rates in Immigration Court? Did the alternatives facilitate access to counsel or otherwise improve proceedings or resolution of cases? How did their costs compare with detention?

It is important to note that the INS detains individuals who are suspected of violating the U.S. Immigration Laws, either by trying to gain admission to the United States illegally or because they were found in the country illegally and have been placed in removal proceedings. As a general rule the INS will detain an individual who claims asylum only long enough to ascertain whether: the individual has a valid asylum claim; is not a threat to society; and is likely to appear for future proceedings.

The INS is interested in the concept of alternatives to detention for appropriate populations and has sought to implement pilot projects over the past few years. Alternatives to traditional detention make sense from both a humane and fiscal perspective. Models have been developed to predict the need for bedspace detention. Forecasts indicate that the need will continue to grow over the next few years. It is important to note that alternatives to detention will not eliminate that need or decrease the overall costs for detention from current levels. Detention alternatives may allow INS to manage its detention resources more efficiently for those individuals who are a serious risk of flight or a danger to the community. The alternatives would allow us to manage the risk of flight for the appropriate population in the community and still achieve compliance with the immigration laws. Some of the most promising initiatives INS has pursued in this area are discussed below.

The Vera Institute for Justice conducted the Appearance Assistance Program Demonstration Project for the INS involving the supervised release of individuals in removal proceedings in New York City. This project was designed to test whether community supervision of aliens could improve rates of appearance at hearings and compliance with immigration judges' final orders without increasing reliance on detention. The supervising officers of the program laid out facts and options, offered assistance in problem solving and offered services and support where needed. The results of the project were very positive for specific populations in reporting for hearings before immigration judges. While alternatives to detention may have been effective to some extent at the Immigration Judge level, they appear to be far less effective in ensuring appearances at the end of the process in cases where aliens have been ordered removed from the United States. The issue remains as to whether results could be improved using alternative methods in other locations. The costs for the demonstration project were high, but they included the development and analysis phases, as well as the day-to-day operational expenses. Regarding the question of whether the project facilitated access to counsel or improved proceedings or resolution of cases, the project had a service component that provided helpful information to participants regarding the legal process. Referrals to free or low-cost legal services were provided as a way to address obstacles to compliance. In addition, a library of legal resources, including books on

immigration law, helped participants take a more active role in preparing their cases. Further, informational videos and pamphlets were provided to assist participants.

The INS has consulted with advocacy groups as potential partners in these projects, and has benefitted from informal arrangements in a number of INS districts where individuals have been released to the sponsorship of community groups. Under the current arrangements, no INS funds have been utilized, so a cost comparison can not be made yet. Standards and measurable criteria to gauge success need to be established for these programs so that they might be regularized and expanded as appropriate.

Existing programs in the criminal detention arena may have applications for alien detention. Halfway houses have been beneficial in the past for Mariel Cubans. New technologies such as electronic monitoring may also need to be examined.

In Pennsylvania, the INS established the first of several family shelters. While still custodial in nature, the environment is significantly different from the traditional detention setting. More investigation needs to be conducted into the use of similar facilities for appropriate populations.

The INS would like to conduct at least two pilot sites in each region, with the potential for multiple sites in locations of exceptional need, such as Miami. These pilots would mix several approaches and include services being provided by INS personnel, non-government organizations, and outside vendors.

ONE HUNDRED SEVENTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON THE JUDICIARY
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INS Oversight Hearing
Immigration Subcommittee
May 15, 2001

Rep. Conyers' Questions for Acting INS Commissioner Kevin Rooney

1. Backlog Reduction –

The Administration's FY 2002 budget includes no money for the backlog reduction account created last year by Congress. Does the Administration plan to request funds for the account as intended by Congress?

2. Reports to Congress –

A report on backlog reduction was required by the "Immigration Services and Infrastructure Improvement Act" on January 17, 2001. When can we expect this report, which is more than three-months overdue?

The Haitian Refugee Immigration Fairness Act of 1999 required the INS to collect data on detained asylum seekers and to report annually to Congress on the data. The first of these reports was due on October 1, 1999. When can we expect this report, which is one-and-a-half years late?

Please provide a list of all of the reports that Congress has mandated the INS to make to Congress but that are overdue, along with an estimate of when those reports will be submitted?

3. Civil Rights Training –

What is the Administration doing to ensure that border patrol agents are trained in civil and human rights?

4. Profiling

Does INS have any nationality or national origin-specific criteria for triggering investigations?

Are there any policies against application of such criteria?

If so, how are they communicated to individual officers?

Are adjudications monitored for trends that would seem to indicate the application of profiling?

How is that monitoring performed, and what have been the statistical results?

Will INS put such monitoring into place?

5. Section 245(i) –

How much money does the Treasury and the INS receive under Section 245(i)?

How would you make up the shortfall if Section 245(i) were to cease to exist?

6. Asylee Adjustment of Status --

Which INS office is responsible for maintaining the waiting list of asylees who have applied for permanent residence?

How is the cut-off date for the waiting list determined?

How quickly are the visas used each year?

Why is this information, particularly the cut-off date, not released to the public?

Please provide a memorandum or some other policy statement describing how the asylee adjustment waiting list is maintained, and how the cut-off date is determined each year.

7. Coordinated Interagency Partnership Regulating International Students –

What is your response to problems raised by the higher education and international exchange communities concerning the proposed fee collection system's excessive reliance on technology?

What is your response to problems raised by the higher education and international exchange communities concerning the likely backlog of applications that would accompany implementation of the program this summer?

Do you intend to consult with the higher education and international exchange communities before moving to implement the system?

Would it be preferable to have INS collect the fees at the point of entry or to have the State Department collect the fees as part of the visa process?

U.S. Department of Justice
Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

June 21, 2001

The Honorable George W. Gekas
Chairman
Subcommittee on Immigration and Claims
Committee on the Judiciary
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

Enclosed please find responses and related materials to questions posed by Congressman Conyers following the Subcommittee's hearing of May 15, 2001, regarding oversight of the Immigration and Naturalization Service. Please let us know if we may be of additional assistance in connection with this or any other matter.

Sincerely,

Daniel J. Bryant
Assistant Attorney General

Enclosures

cc: The Honorable John Conyers, Jr.
Ranking Minority Member
Committee on the Judiciary

The Honorable Sheila Jackson Lee
Ranking Minority Member
Subcommittee on Immigration and Claims

Responses to Questions from Rep. Conyers
to Acting INS Commissioner Kevin Rooney

INS Oversight Hearing
Immigration Subcommittee
May 15, 2001

1. Backlog Reduction—

The Administration's FY 2002 budget includes no money for the backlog reduction account created last year by Congress. Does the Administration plan to request funds for the account as intended by Congress?

In FY 2001, the Administration proposed to establish an Immigration Services Capital Investment Account (ISCIA) to fund immigration services initiatives such as backlog reduction and infrastructure improvements through investments in technology. The funding for this separate account was proposed to be from the premium processing fee, permanent reauthorization of 245(i), and appropriated monies. Although the Administration did not propose an ISCIA in FY 2002, it did request $100 million towards backlog reduction. The $100 million consists of an enhancement of $45 million in appropriated funds, along with $20 million from Premium Processing Service fees and $35 million in recurring appropriated funds from FY 2001. The $100 million represents the first installment of the President's five-year, $500 million initiative to attain a universal six-month processing standard for all immigration applications and petitions by FY 2004 while providing quality service to legal immigrants, citizens, businesses, asylees, refugees, and all other INS customers.

2. Reports to Congress—

A report on backlog reduction was required by the Immigration Services and Infrastructure Improvement Act on January 17, 2001. When can we expect this report, which is more than three months overdue?

The Service is working to develop a detailed Backlog Elimination Plan, including specific, measurable milestones for eliminating the backlog in all immigration benefit programs within 5 years. The Service will forward this report to Congress when it is completed in the next few months.

The Haitian Refugee Immigration Fairness Act of 1999 required the INS to collect data on detained asylum seekers and to report annually to congress on the data. The first of these reports was due on October 1, 1999. When can we expect this report, which is one-and-a-half years late?

Please see the attached Reports to Congress list, item #3.

Please provide a list of all of the reports that Congress has mandated the INS to make to Congress but that are overdue, along with an estimate of when those reports will be submitted.

Please see the attached Reports to Congress list.

3. Civil Rights Training –

What is the Administration doing to ensure that Border Patrol Agents are trained in civil and human rights?

The Border Patrol takes very seriously the fact that the safe and effective conduct of its mission requires a very high level of professionalism and skill. Each Agent must attend the Border Patrol Basic Training Program, an intensive 91-day residential training program. This program greatly emphasizes the rights of individuals and professional conduct with courses that address civil rights, constitutional law, victim awareness, and cross-cultural sensitivity and communication. These have been and remain a mainstay in the overall training program.

4. Profiling –

Does INS have any nationality or national origin-specific criteria for triggering investigations?

INS investigations (anti-smuggling, immigration fraud, worksite) are generated by leads from external sources or by information generated within INS. Any known or alleged nationality or national origin information would be descriptive and part of a specific fact pattern, rather than prescriptive or part of any triggering criteria. INS policy and training on the use of apparent race or ethnicity as a factor are being reviewed as part of the INS's Investigations program evaluation and policy review process.

Are there any policies against application of such criteria?

INS investigative priorities are based upon the strength of a lead and its relationship to the agency's overall priorities for deploying resources, which include: identifying and removing criminal and terrorist aliens, deterring and dismantling alien smuggling, minimizing benefit fraud and document abuse, responding to community complaints about illegal immigration and building partnerships to solve local problems, and blocking and removing employers' access to undocumented workers. These priorities are not based upon particular nationalities or national origins in any way. With respect to decisions on whether to pursue a particular case, the INS has issued guidance on prosecutorial discretion that specifically states that an individual's race, religion, sex, national origin, or political association, activities or beliefs may not be considered as relevant factors, unless they are directly relevant to an alien's status under the

immigration laws or eligibility for an immigration benefit. For example, Congress has passed numerous laws basing eligibility for cancellation of removal or other benefits upon an alien's particular nationality, and INS officers should of course take such eligibility, or lack thereof, into account when assessing the merits of a particular case. INS officers are sworn to uphold the Constitution and laws of the United States, and INS policy and training conforms with Federal law with respect to the extent to which foreign appearance may be considered as a factor within the totality of the circumstances test to support whether or not an INS officer has reasonable suspicion or probable cause to believe that a violation of the immigration laws of the United States has been committed, for purposes of making an arrest or taking other enforcement action.

If so, how are they communicated to individual officers?

New officer training occurs first in the academy setting, then continues with on-the-job training during the initial assignment. Policy reminders are communicated through first-line supervisors, through officer meetings and conferences, and through field memoranda. Officers also participate in training on specific topics.

Are adjudications monitored for trends that would seem to indicate the application of profiling?

Benefit casework is adjudicated on the merits under existing law, regulations and policy. The workload is processed generally in chronological order of filing. No profiling incidents have been reported or observed in normal quality assurance, supervisory reviews or statistical analysis. Therefore, no profiling trend analysis has been conducted.

How is that monitoring performed, and what have been the statistical results?

As stated in the previous answer, agency quality assurance reviews and statistical production trend analysis are conducted, but no specific profiling monitoring plan exists.

Will INS put such monitoring in place?

INS is reviewing profiling issues, but currently there is no plan for specific profiling monitoring in the Adjudications arena.

5. Section 245(i)—

How much money does the Treasury and the INS receive under Section 245(i)?

The INS estimates that in FY 2001 it will receive $40 million from applications filed under the first Section 245(i) program, deposited into the Breached Bond/Detention Fund. The INS estimates that in FY 2001 it will receive $99 million from applications filed under the Section 245(i) program re-authorized with passage of the Legal Immigration Family Equity (LIFE) Act. This amount will be split between the Immigration Examinations Fee Account and the Breached Bond/Detention Fund, with 55.5 percent

going to the Examinations Fee Account and 44.5 percent to the Breached Bond/Detention Fund.

How would you make up the shortfall if Section 245(i) were to cease to exist?

The Detention and Removals program relies heavily on funds generated under the Section 245(i) program. Without these funds from the Breached Bond/Detention Fund, the Detention and Removals program would require appropriated funds to continue operations. Immigration Services is also dependent on these funds through the Immigration Examinations Fee Account in order to process the increased workload due to the LIFE Act, as well as reducing the backlog of current applications and petitions. Without these funds, Immigration Services would require appropriated funds to make up for the shortfall.

6. Asylee Adjustment of Status

Which INS office is responsible for maintaining the waiting list of asylees who have applied for permanent residence?

The Nebraska Service Center (NSC) is the office responsible for maintaining the waiting list of asylees who have applied for permanent residence. Until July 1998, the district offices were responsible for adjudicating asylee adjustment applications. After that time, asylees submitted their applications directly to the NSC. However, there is currently a backlog of approximately 12,000 cases pending before the districts, as well as approximately 51,000 cases waiting to be adjudicated before the NSC. Beginning in fiscal year 2002, the district cases will be consolidated at the NSC, which will be responsible for adjudicating all pending cases in chronological order.

How is the cut-off date for the waiting list determined?

The process in place is not based on a "cut-off date" per se but, rather, is based on a list of individual alien file numbers (A-Numbers) on a waiting list. The list is created based on notification from the district that a case has been adjudicated, appears approvable, and is waiting for a visa number. Consistent with standard "first-in/first-out" INS processing, each year the NSC authorizes for completion the first 10,000 asylee adjustments on the pending list. The INS district offices notify these applicants to complete fingerprinting and other process requirements – as necessary -- before making a final decision in each case. The district offices then notify the NSC of all final decisions where they are recorded in a central database.

How quickly are the visas used each year?

Districts attempt to process cases as quickly as possible after the annual list is released, but in many cases an asylee's eligibility for adjustment in a particular fiscal year based on his or her listing does not result in use of one of the authorized adjustment numbers. This is true for several reasons. There is a multiyear wait between the time an asylee is

eligible to file for adjustment of status and the time his or her application is approvable, which is due in part to the disparity between the number of asylum applications granted and the annual cap of 10,000 adjustments. As a result, applicants may be difficult or impossible to locate due to address or name changes. Some applicants may have obtained adjustment of status through other means, such as marriage to a U.S. citizen.

Why is this information, particularly the cut-off date, not released to the public?

The process INS currently has in place is tracked by A-Numbers, rather than by a cut-off date. Specifically, as district offices notify the NSC that a case is ready for completion, the service center enters the case into the waiting list in the sequence of its receipt by the district office. At the beginning of each fiscal year, the center then distributes the A-Numbers of the next 10,000 cases in the queue to the districts for completion during that fiscal year. Each district office receives the A-Numbers of the cases it is authorized to complete during the fiscal year. The INS has not issued a formal statement regarding the process but has frequently responded to public inquiries regarding the process. The INS has attempted to explain the waiting list on many occasions.

Please provide a memorandum or some other policy statement describing how the asylee adjustment waiting list is maintained, and how the cut-off date is determined each year.

The current policy statement dated October 2, 1998 is attached. A new procedure is being developed and will be provided as soon as it is finalized.

7. Coordinated Interagency Partnership Regulating International Students—

What is your response to problems raised by the higher education and international exchange communities concerning the proposed fee collection system's excessive reliance on technology?

The proposed fee payment system is not overly reliant on technology. Prospective foreign students who wish to can submit the payment and voucher by mail from overseas. The Internet will be the fastest, most convenient way of paying the fee, but it is not the required method.

What is your response to problems raised by the higher education and international exchange communities concerning the likely backlog of applications that would accompany implementation of the program this summer?

The new fee collection system is being implemented according to a schedule that should guarantee that the vast majority of students entering to start classes this fall will not be affected.

Do you intend to consult with the higher education and international exchange communities before moving to implement the system?

We have been consulting with educational and international exchange visitor stakeholders since passage of the IIRIRA, which mandates this program. We conducted a system pilot program with 21 schools within our Atlanta District Office's jurisdiction, and we are currently commencing a test of the proposed national system with several schools in our Boston District Office jurisdiction. We routinely attend educational institution meetings and will continue to consult with the various stakeholder organizations as we move from the test phase to deployment.

Would it be preferable to have INS collect the fees at the point of entry or to have the State Dept collect the fees as part of the visa process?

We are examining this question at this time. Any response we make would need to be coordinated with the Department of State.

Overdue Statutorily-Mandated Reports

Public Law	Statutory Obligation	Due	Status
#1: Pub. L. 104-208, 110 Stat. 3009, Div. C, §386(b), Illegal Immigration Reform & Immigrant Responsibility Act of 1996, Sept. 30, 1996	Report estimating amount of detention space required, for current and upcoming FY, to detain various classes of aliens subject to deportation or exclusion.	03/30/97 and every 6 months thereafter	Reports submitted to Congress on 08/04/97; 10/27/97; 05/07/98; 08/24/99 (4 th report); 09/09/99 (5th report); 05/17/00 (6th report); 02/14/01 (7th report). The 4th and 5th reports were the subject of a 08/04/99 subpoena from the House Judiciary Committee. The 8th report is being drafted.
#2: Pub. L. 102-232, 107 Stat. 1741, §207(c), Misc. & Tech. Immigration & Naturalization Amendments of 1991, Dec. 12, 1991, 8 U.S.C. §1184(c)(8)	AG to report on petitions for H, O, P and Q non-immigrant visas, including, the number of petitions filed, the number of petitions approved and the number of workers (by occupation) included in the approved petitions, the number of petitions denied and the number of workers (by occupation) requested in the denied petitions, the number of petitions withdrawn, and the number of petitions awaiting final action.	annual OPP working on estimated submission date	A report was submitted on 03/07/94. No further reports have been issued since. INS is working on an estimate of a submission date, this has been due to the difficulty in exactracting and consolidating data.
#3: Pub. L. 105-277, Division A, Haitian Refugee Immigration Fairness Act of 1998, §903; Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999, Oct. 21, 1998 [H11190-91]	The AG shall regularly collect data on a nationwide basis with respect to asylum seekers in detention in the United States and submit to Congress a report setting forth the data collected for each fiscal year.	10/01/99 annually	INS will need EOIR to interpret outcomes of asylum claims. INS is currently working with EOIR on another data sharing project. If that proves successful, INS will send selected records to EOIR for record checks. INS anticipates a report to be submitted by 12/01.
#4: Pub. L. 105-277, Division A, Haitian Refugee Immigration Fairness Act of 1998, §904; Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999, Oct. 21, 1998 [H11191]	The AG shall collect data on a nationwide basis and report to Congress each fiscal year on detained aliens (other than asylum seekers).	10/01/99 annually	The 10/01/99 due date was not met because the report covers FY 1999 data, which ends the day before the report is due. INS met with EOIR to identify data that should be provided to INS once the report date is clarified. INS met with Senate Staff on 09/24/99 to clarify outstanding questions about the reporting requirements and staffers agreed to a new reporting deadline of mid-January 2000. INS anticipates a report to be submitted by 11/01.
#5: Pub. L. 104-208, 110 Stat. 3009, Div. C, §413, Illegal Immigration Reform & Immigrant Responsibility Act of 1996, Sept. 30, 1996	Report on additional authority or resources 1) needed by INS to enforce employer sanctions; and 2) needed by federal agencies to enforce E.O. 12989 regarding enforcement of employer sanctions by government contractors.	09/30/97	The draft report has been completed and currently is undergoing revision in response to comments.

Overdue Statutorily-Mandated Reports

Public Law	Statutory Obligation	Due	Status
#6: Pub. L. 104-208, 110 Stat. 3009, Div. C, §564, Illegal Immigration Reform & Immigrant Responsibility Act of 1996, Sept. 30, 1996 [INS 1843; 1115-AE78]	Annual report on effectiveness of program. 1. AG shall establish a three-year pilot program in 5 INS districts to require aliens to post bond in adition to affidavit of support. 2. AG shall issue regulations governing the program, including certifying bonding companic and setting amount of bonds. 3. Annual report on effectiveness of program.	9 months after imp.	INS unsuccessfully tried for 2 years to develop a workable bond pilot based on this statute. Possible interpretations of the provision were found to be legally insufficient because they raised equal protection concerns or were legally impermissible based on the language of the provision and relevant sections of the INA. The passage of welfare reform bars new immigrants from receiving means-tested public benefits for 5 years and IIRIRA imposed an affidavit of support on new immigrants who would be covered by the bond pilot. INS has determined that the provision should be modified or repealed. INS met to discuss this issue with Congress in December 1999. Congressional staffers expressed no concern about the implementation delay.
#7: Pub. L. 106-313, §205(a), Immigration Services and Infrastructure Improvements Act of 2000, October 17, 2000	The AG shall submit a report to Congress concerning the backlogs in immigration benefit applications in existence as of the date of enactment of this title; and the AG's plan for eliminating such backlogs.	01/15/01	INS will forward this report to Congress when it's completed in the next few months.
#8: Pub. L. 99-603, 101 Stat. 3440, §401, Immigration Reform and Control Act of 1986, Nov. 6, 1986, 8 U.S.C. §1364	The President shall transmit to Congress a comprehensive immigration-impact report.	01/01/89 triennial 07/01	Report covering FY 1992 - FY 1994 submitted to Congress on 05/19/99. A report covering FY 1995 - FY 1997 was submitted to the Department for approval on 04/02/01.
#9: Pub. L. 104-208, 110 Stat. 3009, Div. C, §123, Illegal Immigration Reform & Immigrant Responsibility Act of 1996, Sept. 30, 1996, 8 U.S.C. §235A	Report on implementation of preinspection.	10/31/98	Based on a 10/00 DOJ opinion, INS is currently drafting the report.
#10: Pub. L. 104-208, 110 Stat. 3009, Div. C, §332, Illegal Immigration Reform & Immigrant Responsibility Act of 1996, Sept. 30, 1996, 8 U.S.C. §1366	Report on number of illegal aliens incarcerated in federal/state prisons for felonies, and those convicted of felonies but not incarcerated; DOJ programs and plans to ensure prompt removal of criminal aliens; and methods for preventing unlawful reentry of criminal aliens previously removed from U.S.	09/30/97 annual	Because the FY 1997 report was overdue, INS decided to combine that report with the FY 1998 report. The combined FY 1997 and FY 1998 Annual Report on Criminal Aliens was submitted to Congress on 11/19/99. Due to an internal reorganization of the detention and removal function, INS is ascertaining which office will prepare the next report and when it is expected to be completed.
#11: Pub. L. 104-208, 110 Stat. 3009, Div. C, §387(b), Illegal Immigration Reform & Immigrant Responsibility Act of 1996, Sept. 30, 1996	AG and DOD to report on feasibility of using closed military bases as INS detention centers.	03/30/99	Report is final and needs to be transmitted to Congress.

Overdue Statutorily-Mandated Reports

Public Law	Statutory Obligation	Due	Status
#12: Pub. L. 106-386, Div. B, §1505(g), Battered Immigrant Women Protection Act of 2000, October 28, 2000	The AG shall submit an annual report to Congress beginning with FY 1997 on INS procedures by which an alien who has been battered or subjected to extreme cruelty who is eligible for suspension of deportation or cancellation of removal can request to be placed in deportation or removal proceedings in order to apply for suspension of deportation or cancellation of removal; the number of requests filed and granted; and the average length of time at each INS office between requests to be placed in deportation or removal proceedings and the date that the immigrant appears before an immigration judge to file an application.	04/28/01 then annually	INS is working with EOIR to complete this report.
#13: Pub. L. 101-649, 104 Stat. 5032, §302, Immigration Act of 1990, Nov. 29, 1990, 8 U.S.C. §1254 [INS 1612; 1115-AE43]	AG to report on Temporary Protected Status adjudications the previous year.	03/01/92	Reports submitted to Congress on 10/06/99 (FY 1998); 04/28/00 (FY 1999). INS anticipates that the FY 2000 report will be final by 08/01.
#14: Pub. L. 104-193, 110 Stat. 2105, §423, Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Aug. 22, 1996, adding INA §213A, 8 U.S.C. §1183a, as amended by Pub. L. 104-208, 110 Stat. 3009, Div. C, §551(a), Illegal Immigration Reform & Immigrant Responsibility Act of 1996, Sept. 30, 1996 [INS 1807; 1115-AE58]	AG to submit report on number of affidavit of support sponsors for preceding FY.	Annual	Because the affidavit of support was not in effect, no public charge deportations occurred. Therefore, INS had no substantive information to report for FY 1997. INS is in the process of completing the information for 1998 and will issue a combined report on the two years. This information will be combined with the section 565 report on the number of public charge deportations in a fiscal year. INS anticipates that the FY 1999 report will be final 09/01. The new report for FY 2000 is being prepared and will be submitted to the DOJ by 08/01.
#15: Pub. L. 104-208, 110 Stat. 3009, Div. C, §122, Illegal Immigration Reform & Immigrant Responsibility Act of 1996, Sept. 30, 1996, as amended by CJS 2000.	AG to file quarterly status reports on 6 pilot projects charging inspections fee at land border ports of entry.	Quarterly	Fourth Quarter 1997 report submitted to Congress on 06/22/98. First Quarter 1998 report submitted to Congress on 06/16/98. The Consolidated Report covering 2nd Quarter FY 1998 - FY 1999 was submitted to Congress 10/25/00. FY 2000 is under revision and the 1st and 2nd Quarters of FY 2001 are currently being drafted.
#16: Pub. L. 104-208, 110 Stat. 3009, Div. C, §§401-05, Illegal Immigration Reform & Immigrant Responsibility Act of 1996, Sept. 30, 1996	AG to report on operation and effectiveness of the pilot programs for confirming employment authorization based on INS and SSA databases.	12/31/2000 and 12/31/2001	The Basic Pilot has been established and the first evaluation report is anticipated to be submitted by 10/01.

Overdue Statutorily-Mandated Reports

Public Law	Statutory Obligation	Due	Status
#17: Pub. L. 104-208, 110 Stat. 3009, Div. C, §565, Illegal Immigration Reform & Immigrant Responsibility Act of 1996, Sept. 30, 1996	Report on number of public charge deportations; indigent sponsors; and reimbursement actions recovering cost of public benefits from persons who filed affidavits of support.	03/29/97 annual	Reports submitted to Congress on 05/22/98 and 10/12/99. There are problems with data collection on public charge deportations resulting from coding changes under the 1990 and 1996 revisions to deportation charges. INS is currently exploring alternative sources of information which may be more accessible. The report was submitted to DOJ and DOJ returned the report with comments on 10/20/00. INS anticipates that the report will be final 09/01.
#18: Pub. L. 101-649, 104 Stat. 5014, §201(c), Immigration Act of 1990, Nov. 29, 1990, 8 U.S.C. §1187 note, as amended by Pub. L. 105-173, April 27, 1998, INA §217(f), 8 U.S.C. §1376	1. AG, in consultation with State, to report on the operation of the automated data arrival and departure control system for foreign visitors and on admission refusals and overstays under the visa waiver program. 2. AG shall submit an annual report to the Congress providing numerical estimates, for each country for the preceding fiscal year, of the number of aliens within each of the classes of nonimmigrant aliens described in INA section 101(a)(15) whose authorized period of stay in the United States terminated during the previous fiscal year, but who remained in the United States notwithstanding such termination.	1. 01/01/92 2. 06/30/99 annual	1. A report was submitted at the end of the initial pilot period. A subsequent report was written to address Congressional concerns, but was delayed. INS is working to expand the pilot program to other locations and airlines and to develop comparable sea and border programs. INS also is developing the Non-Immigrant Information System (NIIS) to capture data. INS and EONS have established a working group to revise the Vias Waiver Pilot Program. 2. The last report was submitted to Congress on 02/01/00.
#19: Pub. L. 105-277, Division C, American Competitiveness and Workforce Improvement Act of 1998, §416, Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999, Oct. 21, 1998 [H11221] [RIN 1115-AF73]	1. The AG shall notify Congress quarterly of the numbers of aliens who were issued H-1B visas or otherwise provided H-1B nonimmigrant status during the preceding 3-month period. 2. The AG shall submit a report to Congress of information on the countries of origin and occupations of, educational levels attained by, and compensation paid to, aliens who were issued H-1B visas or otherwise provided H-1B nonimmigrant status during the previous fiscal year.	1.02/28/99 quarterly 2. 10/01/00 annually	1. The first quarterly report was submitted to Congress in April 1999. The 2 nd quarterly report was submitted to DOJ in July 1999 and transmitted to Congress. The 3 rd quarterly report was submitted to Congress on 11/09/99. INS undercounted the number of H-1B aliens that should have been recorded against the cap. DOJ notified Congress that the quarterly reports will be delayed. INS anticipates that the 4th Quarterly report for FY 2000, which contains information on all of the FY 2000 quarters, will be final by 07/15/01. 2. INS published an interim report for the first 5 months of FY 2000 with the information and anticipates that the final report will be published in 08/01.
#20: Pub. L. 106-406 , §2, International Patient Act of 2000, amending §240B(a)(2), Immigration and Nationality Act, Nov. 1, 2000	INS shall submit a report to Congress regarding all waivers granted nonimmigrants (or their accompanying immediate family members) seeking to continue medical treatment in the US.	03/30/xx annual	No report was due on 03/30/01 because no waivers granted during prior period, so next report due on 03/30/02 for FY 2001.
#21: Pub. L. 101-515, 104 Stat. 2120, §210(a), Departments of Commerce, Justice, & State, the Judiciary & Related Agencies Appropriations Act of 1991, Nov. 5, 1990, 8 U.S.C. §1356(h)	AG to submit a biennial report to Congress concerning the status of the Immigration User Fee Account, including any balances and recommend adjustment in the prescribed fee.	biennial	INS published a notice on 02/16/00 requesting comments by 04/7/00 on the adjustment of proposed fees. Report combined with #23-25 & #27-28. DOJ hopes to submit the combined report to Congress by 08/01.

Overdue Statutorily-Mandated Reports

Public Law	Statutory Obligation	Due	Status
#22: Pub. L. 101-515, 104 Stat. 2120, §210(a). Departments of Commerce, Justice, & State, the Judiciary & Related Agencies Appropriations Act of 1991, Nov. 5, 1990, 8 U.S.C. §1356(l)	AG to submit an annual report on the financial condition of the Immigration User Fee Account, including INS's success rate in meeting the 45 minute inspection standard, and detailed port-by-port statistics.	annual 03/31/xx	Reports filed 08/18/95; 06/05/96; 06/18/98; 08/18/00. Report combined with #22, 24-25 & #27-28. DOJ hopes to submit the combined report to Congress by 08/01.
#23: Pub. L. 101-515, 104 Stat. 2120, §210(a). Departments of Commerce, Justice, & State, the Judiciary & Related Agencies Appropriations Act of 1991, Nov. 5, 1990, 8 U.S.C. §1356(o)	AG to submit an annual report on the financial condition of the Immigration Examinations Fee Account.	annual 03/31/xx	Report submitted to Congress every year. The last on 08/18/00. Report combined with #22-23, 25 & #27-28. DOJ hopes to submit the combined report to Congress by 08/01.
#24: Pub. L. 101-515, 104 Stat. 2121, §210(d)(3), Departments of Commerce, Justice, & State, the Judiciary & Related Agencies Appropriations Act of 1991, Nov. 5, 1990, 8 U.S.C. §1356(q)(4)	AG to submit an annual statement on the financial condition of the Land Border Immigration Fee Account.	annual 03/31/xx	Reports submitted to Congress on 07/24/95; 06/05/96; 06/20/97; 06/18/98; 08/18/00. Report combined with #22-24 & #27-28. DOJ hopes to submit the combined report to Congress by 08/01.
#25: Pub. L. 101-649, 104 Stat. 5014, §201(e), Immigration Act of 1990, Nov. 29, 1990, 8 U.S.C. §§1103(d) and (e).	INS to report information useful in evaluating the social, economic, environmental, and demographic impact of immigration laws; including rates of naturalization and emigration of resident aliens, on aliens admitted, paroled or granted asylum, on nonimmigrants in the US (by occupation, basis for admission, and duration of stay, on aliens excluded or deported; on number of applications filed and granted for suspension of deportation and on number aliens estimated to be present unlawfully.	annual	All the statistical information currently published in the INS yearbook. The additional analysis is considered impossible to accomplish. GAO did issue a report on INS compliance titled "Immigration Statistics: Guidance on Producing Information on the U.S. Resident Foreign-born." Publication of the 1997 INS Statistical Yearbook was expected by 06/30/99. The 1997 Yearbook was published in December 1999. The 1998 Yearbook was published in November 2000. FY99 Statistical Yearbook 10/01 FY00 Statistical Yearbook 01/02
#26: Pub. L. 102-395, 106 Stat. 1844, §112, Departments of State, Justice, & Commerce, the Judiciary & Related Agencies Appropriations Act of 1992, Oct. 6, 1992, 8 U.S.C. §1356(r)(5)	AG to submit financial statements on the Breached Bond/Detention Account.	annual	Reports submitted to Congress on 07/24/95; 06/05/96; 06/20/97; 06/18/98; 05/20/99; 08/18/00. Report combined with #22-25 & #28. DOJ hopes to submit the combined report to Congress by 08/01.

Overdue Statutorily-Mandated Reports

Public Law	Statutory Obligation	Due	Status
#27: Pub. L. 104-208, 110 Stat. 3009, Div. C, §§376 and 382, Illegal Immigration Reform & Immigrant Responsibility Act of 1996, Sept. 30, 1996, 8 U.S.C. §§1356(s), 1330(b)	AG shall submit statements of financial condition of new Immigration Detention Account and Immigration Enforcement Account.	Annually; will be reported 03/31/xx	These obligations parallel existing reporting requirements for other INS fee accounts. The immigration Detention Account no longer exists; this account was merged into the Breached Bond Account. Reports submitted to Congress on 06/18/98; 05/20/99; 08/18/00. Report combined with #22-25 & #27. DOJ hopes to submit the combined report to Congress by 08/01.
#28: Pub. L. 104-208, 110 Stat. 3009, Div. C, §601, Illegal Immigration Reform & Immigrant Responsibility Act of 1996, Sept. 30, 1996	Report on number and countries of origin of aliens granted refugee status relating to coercive population control.	12/29/97 and annually	Reports submitted to Congress on 05/14/98 (FY 1997); 04/29/99 (FY 1998); 06/27/00 (FY 1999). FY 2000 Report has been signed by Acting Commissioner 05/25/01. Report needs to be transmitted to Congress.
#29: Pub. L. 104-208, 110 Stat. 3009, Div. C, §602, Illegal Immigration Reform & Immigrant Responsibility Act of 1996, Sept. 30, 1996, 8 U.S.C. §1157(c)(3)	Report on number, category, country of origin, duration and status with respect to aliens paroled into U.S. on humanitarian or public interest grounds.	12/29/97 annual	Reports submitted to Congress on 05/06/99 (FY 1997); 07/14/00 (FY 1998). INS anticipates submitting a report to Congress by 11/01 (FY 1999). INS has just received data for FY 1999. The data for FY 2000 will not be available for several months.

U.S. Department of Justice
Immigration and Naturalization Service

425 I Street NW
Washington, DC 20536

OCT 2 - 1998

MEMORANDUM FOR REGIONAL DIRECTORS
SERVICE CENTER DIRECTORS

FROM: William R. Yates
Acting Deputy Executive Associate Commissioner
Office of Field Operations
Immigration & Naturalization Service

SUBJECT: Direct Mail Processing of Refugee and Asylee Applications to Adjust Status Under Section 209

An interim rule to extend the Direct Mail Program to the processing and adjudication of refugee and asylee adjustment applications under section 209 of the Immigration and Nationality Act (the Act) was published on June 3, 1998. The text of the rule and its preamble is attached for reference. The effective date of the rule was July 6, 1998.

By enabling the Immigration and Naturalization Service (INS) to centralize the recording and management of refugee and asylee adjustment cases at a service center, the new rule should promote consistency in our adjudication and improve the efficiency of service to the applicants. Section 8 CFR 209 has been amended to allow the receiving service center to adjudicate adjustment applications without an interview, when appropriate. The new rule also implements recent policy changes regarding medical and fingerprinting requirements.

This interim rule will remain in effect from July 6, 1998, until such time as it is superseded by a final rule.

Processing of Refugee and Asylee Adjustment Applications under the Direct Mail Program:

Under the previous rule, use of the Form I-485 was required only for applications filed by asylees under section 209(b) of the Act. No standard form was prescribed for the adjustment of refugees under section 209(a). Effective July 6, 1998, refugees were required to apply for adjustment on Form I-485, the same form already prescribed for applications filed by asylees. The I-485 applications filed by refugees under section 209(a) of the Act are fee-exempt. Both

refugees and asylees mail their I-485 adjustment applications to a designated INS Service Center, which at this time is the Nebraska Service Center (NSC). Applicants for asylum-based adjustment continue to check block "D" of the I-485. Until the current I-485 can be revised, refugee applicants will identify their status by marking block "H" of the I-485, and entering the word "Refugee" in the space provided.

A refugee or asylee I-485 application mailed to the NSC must include the required I-485 photographs. Form I-643, Health and Human Services Statistical Data for Refugee/Asylee Adjusting Status, should also be submitted, although no penalty is prescribed for failure to do so. After acceptance of the I-485, the NSC will schedule those applicants required to be fingerprinted to appear at an application support center (ASC) for such. Refugee and asylee adjustment applicants who are 14 years of age or older are subject to the $25 fingerprint processing fee requirement, unless they have applied for and been granted a fee waiver under the provisions of Section 8 CFR 103.7(c). The adjudicating office will notify applicants whose I-485 applications have been approved regarding an appointment for the execution of a Form I-89, Data Collection Card.

Refugee or asylee adjustment applicants who seek an Employment Authorization Document (EAD), advance parole or refugee travel document, or waiver of inadmissibility should submit the Form I-765, I-131, or I-602 to the NSC concurrently with the adjustment application, as long as the application is pending at the NSC. If the applicant's I-485 is transferred to a local district office for adjudication, the NSC will instruct the applicant to submit any subsequent Form I-765, I-131 or I-602 to the local office where the I-485 application is pending.

Case Referrals to Local Offices:

Most section 209 adjustment applications submitted under the Direct Mail Program will be retained for adjudication at the NSC without an in-person interview. However, the NSC will refer to the local offices all applications which can best be resolved through an interview, such as those involving higher risk or complex issues, criminal charges, indications of fraud, and asylee applicants whose records indicate entry without inspection or changes in the country conditions on which the original grant of asylum was based. In addition, the NSC will refer for interview a random sample of at least 2 percent of all other refugee and asylee adjustment applications. The results will provide an ongoing indicator of the integrity of the adjudication process as well as emerging trends affecting the exercise of the Service's interview determination authority.

Other case referral criteria may be added or changed as they are developed by the NSC and by INS district offices. In a previous memorandum HQ 70/20-C dated September 3, 1997, the Office of Adjudications solicited recommendations from field offices regarding other interview referral criteria that in their judgment would be appropriate. A copy of the original memorandum is attached for reference. Although the original deadline for suggestions to the Office of

Adjudications is past, field offices are invited to refer any additional interview referral suggestions to the Office of Field Operations.

Whenever the NSC refers an adjustment application to a local office for adjudication, the application will be accompanied by a "Relocation of Pending I-485 Filed by Refugee or Asylee and Report of Final Action Taken" form, a copy of which is attached for reference. The NSC will fill out Part I of the form with the reason(s) for the relocation of the case to the receiving office. Upon completing the adjudication the local office will execute Part 11 of the form with a report regarding the final action taken on the case and will return the form to the NSC. The completed processing worksheets will be retained and reviewed for the purpose of improving adjudication quality and developing new interview referral criteria.

Local offices receiving section 209 case referrals from the NSC are to adjudicate the I-485 to completion. Under existing rules, if the adjudicating office develops evidence that the original grant of asylum was obtained through fraud or misrepresentation or that the applicant no longer qualifies as a refugee under section 101(a)(42) of the Act, it must refer the case to the Asylum Office having jurisdiction over the applicant's place of residence for a determination whether asylee status is to be revoked. The determination by the Asylum Office will be the basis for the final adjudication of the Form I-485 application by the INS field office.

Annual Limit of 10,000 for Asylee Adjustments of Status:

The number of asylees who may be adjusted during any fiscal year is limited by section 209(b) of the Act to 10,000. Therefore, every adjudicating office, whether it is a service center or a local office, must verify that a visa number is available prior to finalizing the approval of any asylee adjustment application.

No asylee adjustment application may be completed until the adjudicating office receives notice from the NSC that an asylee adjustment number has been allocated to it. To obtain the asylee adjustment allocation, each adjudication office must provide the NSC with the information set forth on the attached form regarding every application that it has been determined to be approvable in every other respect. These forms are to be faxed to the NSC at (402) 437-5899. The NSC point of contact is SCAO Tom Barber at (402) 437-4197.

It is anticipated that the demand for asylee adjustment numbers for Fiscal year 1999 will soon exceed the 10,000 annual cap [Section 209(b) of the Act of 10,000]. Therefore, adjudication offices are urged to report their approvable cases pending completion to the NSC as soon as possible in order to secure adjustments numbers for those applicants.

Until the annual cap has been reached, the NSC will notify the field offices within one month as to which cases may be complete. Once the cap has been reached, the NSC will maintain a consolidated list of the pending asylee adjustment applications in priority date order. At the

beginning of the next fiscal year, that list will be the basis for notifying the local offices as to which cases they may process to completion.

Please distribute this memorandum to all field offices and training centers within your jurisdiction. Field offices are requested to provide a copy to their local ASC managers so they are aware of the upcoming fingerprint workload. Scheduling capacities will be addressed with the ASCs before applicants are actually scheduled.

Attachments

○